

STORAGE NAME: h0307a.grr

DATE: March 23, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
ANALYSIS**

BILL #: HB 307

RELATING TO: Safe Water Act of 2000

SPONSOR(S): Representative Boyd and others

TIED BILL(S): HB 309

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

- (1) WATER & RESOURCE MANAGEMENT YEAS 12 NAYS 0
 - (2) GOVERNMENTAL RULES & REGULATIONS YEAS 7 NAYS 0
 - (3) COMMUNITY AFFAIRS
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

HB 307 creates the Safe Water Act of 2000, a program that would provide grants mostly to small-population counties and cities for water and wastewater improvements.

Under the proposed legislation, the Department of Environmental Protection (DEP), in conjunction with the Department of Community Affairs (DCA), is directed to review applications received from interested local governments and establish a priority list. Counties having fewer than 125,000 people and cities having fewer than 12,500 residents would receive first consideration. In evaluating the grant applications, DEP is directed to consider a number of criteria, including, but not limited to:

- the applicant's need for water and wastewater utilities, and
- environmental issues related to septic tanks or the lack of utilities; public health and safety; lack of local fiscal resources; whether the community is under a consent order or other state or federal regulatory action; and the availability of matching or leveraged federal funds.

HB 307 directs the Legislature, beginning in fiscal year 2000-2001, to deposit into a Water and Wastewater Treatment Grant Program Trust Fund (to be created pursuant to HB 309) \$100 million annually in general revenue for the next 10 years.

The bill also grants DEP authority to adopt rules specifying the criteria for awarding the grants.

HB 307's Safe Water Act program would be in addition to existing state programs, totaling about \$145 million in fiscal year 1999-2000, where local governments can apply for low-interest loans or grants, financed in part by federal funds, for similar projects. Also providing potential funding for similar projects is a process initiated for the fiscal year 2000-2001 budget cycle, where a 15-member Water Advisory Panel of legislators and gubernatorial appointees has reviewed grant applications for water-related projects, and recommended the ones that best meet the specified criteria to the Legislature for inclusion in the Appropriations Act.

HB 307 raises no apparent constitutional or other legal issues, and would take effect July 1, 2000.

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

HB 307 creates a water/wastewater facilities funding program that, in some respects, overlaps existing drinking water and wastewater revolving loan programs in chapter 403, F.S. The existing programs do require extensive paperwork and information from applicants -- much of it specified by federal guidelines -- which apparently create expensive or unrealistic conditions for small, less-affluent communities to successfully compete for the dollars. While open to all cities and counties regardless of population, both the drinking water and the wastewater programs set aside at least 15 percent of their loan funds specifically for small or financially disadvantaged communities, or for small water systems. The wastewater revolving loan program also has a fledgling grants program, (s. 403.1838, F.S.) financed through a surcharge on the loans.

B. PRESENT SITUATION:

Following the passage, in the early 1970s, of the federal Clean Water Act, Florida statutorily created programs that provide funds to counties and cities to construct, or make improvements to, water and wastewater facilities. These programs pre-date the creation of the Wastewater State Revolving Loan Trust Fund (enacted in 1989) and the Drinking Water State Revolving Loan Trust Fund (enacted in 1997), which allowed Florida to take advantage of federal matching funds. The state continues to maintain separate revolving loan programs for drinking water projects (s. 403.8532, F.S.) and for wastewater/stormwater projects (s.403.1835, F.S.) Both programs are largely funded with federal dollars; in recent years, the federal match has been \$5 for every \$1 the state appropriates. Because federal funds are involved, the programs include numerous paperwork, research and design requirements; compliance with environmental laws; and adherence to a number of peripheral federal guidelines, such as program contractors having to pay their employees prevailing regional average wages.

In fiscal year 1999-2000, the Legislature appropriated \$113 million to the Wastewater State Revolving Loan Trust Fund and \$32 million to the Drinking Water State Revolving Loan Trust Fund. These amounts include the federal matches. Currently, the interest rate on these loans is in the range of 1.8 percent to 4 percent.

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

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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.

In addition, both the drinking water and the wastewater programs set aside at least 15 percent of their loan funds for small or financially disadvantaged communities, or for small water systems that serve fewer than 10,000 people.

The water and wastewater programs annually receive applications for more money than is available. However, DEP thinks many more counties and cities with water and wastewater improvement needs do not even participate, 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. Communities of all sizes and incomes have complained that the procedures for obtaining a water or wastewater loan are too complicated and intimidating. Finally, some communities face immediate needs for water and wastewater improvements, particularly when a system fails and creates a public health hazard, and existing programs are not set up to be responsive in such a crisis. Local governments' various concerns about the existing programs have led them to persuade their area legislators to seek at least some of the funds needed through a "member project request" to the Legislature's budget committees.

The future of member project requests as an alternate avenue for obtaining funding for water-related projects came into question in July 1999, when Governor Bush released his list of line-item vetoes. About \$15.44 million in wastewater projects and another \$15 million in water restoration projects were among the total \$313 million the Governor vetoed, citing concerns that the projects had not gone through a sufficient evaluation process.

In September, the Governor and his staff began meeting with key legislators and their staffs to develop a set of criteria by which wastewater, stormwater and waterbody restoration project requests could be evaluated. (Criteria for evaluating drinking water facility improvements were not addressed.) The eventual agreed-upon criteria are similar to those used by DEP to evaluate project applications for the current statutory programs.

The criteria were included in the Governor's Executive Order 99-288, issued in November, as well as creation of a 15-member Water Advisory Panel staffed by DEP to evaluate funding requests for wastewater and waterbody restoration project requests. The panel, comprised of five House members, five senators and five gubernatorial appointees, met four times to review the projects, and to hear testimony from entities requesting the funding. On February 24, 2000, the panel adopted a list of 247 projects, seeking an estimated \$390 million. Of the total, 117 were wastewater projects, seeking a total \$190 million in state funds. The list has been transmitted to the Legislature and the Governor. The House Appropriations Committee and the Senate Ways and Means Committee will consider the panel's recommended list when deciding which projects to fund in their budget bills.

C. EFFECT OF PROPOSED CHANGES:

HB 307 creates the Safe Water Act of 2000. Specifically:

- DEP as the lead agency, and in conjunction with the Department of Community Affairs (DCA), is directed to create the Water and Wastewater Treatment Grant Program for local governments and develop a priority list of applicants for the program.
- In developing the priority list, DEP shall first consider the applications from counties having fewer than 125,000 people and from cities having fewer than 12,500 residents. Based on the University of Florida's Bureau of Economic and Business Research 1999 population estimates, 39 of Florida's 67 counties have fewer than 125,000 residents, while 276 municipalities have fewer than 12,500 residents.
- DEP shall adopt rules for awarding water and wastewater treatment grants based on, but not limited to, the following criteria:
 - the applicant's need for water and wastewater utilities, and
 - environmental issues related to septic tanks or the lack of utilities; public health and safety; lack of local fiscal resources; whether the community is under a consent order or other state or federal regulatory action; and the availability of matching or leveraged federal funds.
- The Legislature, beginning in fiscal year 2000-2001, shall deposit into the Water and Wastewater Treatment Grant Program Trust Fund \$100 million annually in general revenue, for the next 10 years.

HB 307 proposes to establish a program that appears to duplicate, in some ways, existing programs that also rely on state general revenue for funding. The current programs are the Drinking Water State Revolving Loan Program and the Wastewater State Revolving Loan Trust Fund. In addition, the Water Advisory Panel -- comprised of senators, representatives and gubernatorial appointees -- has recommended to the Legislature for fiscal year 2000-2001 more than \$190 million in wastewater improvement projects, many of them from small or financially disadvantaged communities. The source of funding for the panel-recommended projects is general revenue.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates the Safe Water Act of 2000.

Section 2: Designates DEP as the lead agency, in conjunction with DCA, for the new Water and Wastewater Treatment Grant Program for eligible local governments. Gives initial consideration for applicant counties with fewer than 125,000 persons and applicant cities with fewer than 12,500 residents. Gives DEP rulemaking authority to establish criteria, including, but not limited to, the need for water and wastewater utilities, and certain environmental issues related to septic tanks or the lack of utilities. Specifies that beginning in FY 2000-2001, and until FY 2010-2011, \$100 million in general revenue shall be deposited annually in the Water and Wastewater Treatment Grant Program Trust Fund.

Section 3: Specifies that this act shall take effect July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

HB 307 specifies that \$100 million in general revenue shall be deposited into the Water and Wastewater Treatment Grant Program Trust Fund annually, from 2000-2001 through 2010-2011, to fund the Safe Water Act. In actuality, the Legislature would decide each year whether to appropriate another \$100 million for the program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Eligible local governments could receive a total of \$100 million a year in grants, over the next decade, for water and wastewater system improvements.

2. Expenditures:

Since HB 307 does not require eligible local governments to provide a match to the state grants, the potential for increases in city or county taxes to pay for water/wastewater improvements is minimal. Local governments, however, would likely incur engineering, legal and other expenses in preparing their grant applications.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate, but likely positive.

D. FISCAL COMMENTS:

Potentially, the Legislature could be forced to choose which among the various water and wastewater programs to fund with general revenue. Alternately, the Legislature could decide to fully fund the water-related programs by reducing general revenue to other non-water programs; appropriate an equal share of funds to each of the water-related programs; or decide to create dedicated revenue sources to fund water and wastewater improvements.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is not triggered by HB 307 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:

HB 307 does not reduce the revenue-raising authority of counties or municipalities.

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

HB 307 does not reduce the state sales tax revenues shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

HB 307 gives DEP the authority to adopt rules for awarding water and wastewater treatment grants, incorporating some basic legislative guidance in the bill.

C. OTHER COMMENTS:

A bill analysis drafted by Department of Community Affairs staff includes the comment that DCA's role in the proposed Safe Water Act of 2000 is unclear. DEP staff in their bill analysis expressed concerns that, among other issues, HB 307's grant of rulemaking authority gives the agency insufficient guidance; that the bill doesn't identify the specific criteria for determining whether a community has a need for water and wastewater facilities; and that the bill does not give DEP any personnel or funding to implement the Safe Water Act.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

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