

By Senator Baker

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1 A bill to be entitled
 2 An act relating to drinking water; amending ss. 11.45
 3 and 403.1835, F.S.; conforming terms to changes made
 4 by the act; amending s. 403.1837, F.S.; renaming the
 5 Florida Water Pollution Control Financing Corporation
 6 as the Florida Water Pollution Control and Drinking
 7 Water Financing Corporation; expanding the
 8 jurisdiction of the corporation to include loans made
 9 from the drinking water state revolving loan fund;
 10 amending s. 403.8532, F.S.; providing definitions for
 11 the terms "bonds" and "corporation"; conforming
 12 provisions to changes made by the act; authorizing the
 13 Department of Environmental Protection to adopt
 14 certain rules; amending s. 403.8533, F.S.; revising
 15 the purposes for the Drinking Water Revolving Loan
 16 Trust Fund; providing that the trust fund is exempt
 17 from the termination provisions of the State
 18 Constitution; providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Paragraph (o) of subsection (3) of section
 23 11.45, Florida Statutes, is amended to read:

24 11.45 Definitions; duties; authorities; reports; rules.—

25 (3) AUTHORITY FOR AUDITS AND OTHER ENGAGEMENTS.—The Auditor
 26 General may, pursuant to his or her own authority, or at the
 27 direction of the Legislative Auditing Committee, conduct audits
 28 or other engagements as determined appropriate by the Auditor
 29 General of:

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30 (o) The Florida Water Pollution Control and Drinking Water
31 Financing Corporation created pursuant to s. 403.1837.

32 Section 2. Subsection (2) of section 403.1835, Florida
33 Statutes, is reordered and amended, and subsections (3) and (10)
34 of that section is amended, to read:

35 403.1835 Water pollution control financial assistance.—

36 (2) As used in ~~For the purposes of~~ this section and s.
37 403.1837, the term:

38 (c) ~~(a)~~ "Local governmental agencies" refers to any
39 municipality, county, district, or authority, or any agency
40 thereof, or a combination of two or more of the foregoing,
41 acting jointly in connection with a project having jurisdiction
42 over collection, transmission, treatment, or disposal of sewage,
43 industrial wastes, stormwater, or other wastes and includes a
44 district or authority whose ~~the~~ principal responsibility ~~of~~
45 ~~which~~ is to provide airport, industrial or research park, or
46 port facilities to the public.

47 (a) ~~(b)~~ "Bonds" means bonds, certificates, or other
48 obligations of indebtedness issued by the ~~Florida Water~~
49 ~~Pollution Control Financing~~ corporation under this section and
50 s. 403.1837.

51 (b) ~~(e)~~ "Corporation" means the Florida Water Pollution
52 Control and Drinking Water Financing Corporation created under
53 s. 403.1837.

54 (3) The department may provide financial assistance through
55 any program authorized under 33 U.S.C. s. 1383 ~~603 of the~~
56 ~~Federal Water Pollution Control Act (Clean Water Act), Pub. L.~~
57 ~~No. 92-500~~, as amended, including, but not limited to, making
58 grants and loans, providing loan guarantees, purchasing loan

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59 insurance or other credit enhancements, and buying or
60 refinancing local debt. This financial assistance must be
61 administered in accordance with this section and applicable
62 federal authorities. ~~The department shall administer all~~
63 ~~programs operated from funds secured through the activities of~~
64 ~~the Florida Water Pollution Control Financing corporation under~~
65 ~~s. 403.1837, to fulfill the purposes of this section.~~

66 (a) The department may make or request the corporation to
67 make loans to local government agencies, which ~~agencies~~ may
68 pledge any revenue available to them to repay any funds
69 borrowed.

70 (b) The department may make or request the corporation to
71 make loans, grants, and deposits to other entities eligible to
72 participate in the financial assistance programs authorized
73 under the Federal Water Pollution Control Act, or as a result of
74 other federal action, which ~~entities~~ may pledge any revenue
75 available to them to repay any funds borrowed. Notwithstanding
76 s. 17.57, the department may make deposits to financial
77 institutions that ~~which~~ earn less than the prevailing rate for
78 United States Treasury securities that have ~~with~~ corresponding
79 maturities for the purpose of enabling such financial
80 institutions to make below-market interest rate loans to
81 entities qualified to receive loans under this section and the
82 rules of the department.

83 (c) The department shall administer financial assistance so
84 that at least 15 percent of the funding made available each year
85 under this section is reserved for use by small communities
86 during the year it is reserved.

87 (d) The department may make grants to financially

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88 disadvantaged small communities, as defined in s. 403.1838,
89 using funds made available from grant allocations on loans
90 authorized under subsection (4). The grants must be administered
91 in accordance with s. 403.1838.

92 (10) The department may adopt rules regarding program
93 administration; project eligibilities and priorities, including
94 the development and management of project priority lists;
95 financial assistance application requirements associated with
96 planning, design, construction, and implementation activities,
97 including environmental and engineering requirements; financial
98 assistance agreement conditions; disbursement and repayment
99 provisions; auditing provisions; program exceptions; the
100 procedural and contractual relationship between the department
101 and the ~~Florida Water Pollution Control Financing~~ corporation
102 under s. 403.1837; and other provisions consistent with the
103 purposes of this section.

104 Section 3. Section 403.1837, Florida Statutes, is amended
105 to read:

106 403.1837 Florida Water Pollution Control and Drinking Water
107 Financing Corporation.-

108 (1) The Florida Water Pollution Control and Drinking Water
109 Financing Corporation is created as a nonprofit public-benefit
110 corporation for the purpose of financing or refinancing the
111 costs of ~~water pollution control~~ projects and activities
112 described in ss. s. ~~403.1835~~ and 403.8532. The projects and
113 activities described in those sections ~~that section are found to~~
114 constitute a public governmental purpose; are ~~be~~ necessary for
115 the health, safety, and welfare of all residents; and include
116 legislatively approved fixed capital outlay projects. Fulfilling

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117 ~~The fulfillment~~ of the purposes of the corporation promotes the
118 health, safety, and welfare of the people of the state and
119 serves essential governmental functions and a paramount public
120 purpose. The activities of the corporation are specifically
121 limited to assisting the department in implementing financing
122 activities to provide funding for the programs authorized in ss.
123 ~~s.~~ 403.1835 and 403.8532. All other activities relating to the
124 purposes for which the corporation raises funds are the
125 responsibility of the department, including, but not limited to,
126 development of program criteria, review of applications for
127 financial assistance, decisions relating to the number and
128 amount of loans or other financial assistance to be provided,
129 and enforcement of the terms of any financial assistance
130 agreements provided through funds raised by the corporation. The
131 corporation shall terminate upon fulfilling ~~fulfillment~~ of the
132 purposes of this section.

133 (2) The corporation shall be governed by a board of
134 directors consisting of the Governor's Budget Director or ~~the~~
135 ~~budget director's~~ designee, the Chief Financial Officer or ~~the~~
136 ~~Chief Financial Officer's~~ designee, and the Secretary of
137 Environmental Protection or ~~the secretary's~~ designee. The
138 executive director of the State Board of Administration shall be
139 the chief executive officer of the corporation; shall direct and
140 supervise the administrative affairs of the corporation; and
141 shall control, direct, and supervise operation of the
142 corporation. The corporation shall have such other officers as
143 may be determined by the board of directors.

144 (3) The corporation shall have all the powers of a
145 corporate body under the laws of the state, consistent ~~to the~~

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146 ~~extent not inconsistent~~ with ~~or restricted by~~ this section,
147 including, but not limited to, the power to:

148 (a) Adopt, amend, and repeal bylaws consistent ~~not~~
149 ~~inconsistent~~ with this section.

150 (b) Sue and be sued.

151 (c) Adopt and use a common seal.

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

156 (e) Elect or appoint and employ such officers, agents, and
157 employees as the corporation considers advisable to operate and
158 manage the affairs of the corporation, who ~~which officers,~~
159 ~~agents, and employees~~ may be officers or employees of the
160 department and the state agencies represented on the board of
161 directors of the corporation.

162 (f) Borrow money and issue notes, bonds, certificates of
163 indebtedness, or other obligations or evidences of indebtedness
164 described in s. 403.1835 or s. 403.8532.

165 (g) Operate, as specifically directed by the department,
166 any program to provide financial assistance authorized under s.
167 403.1835(3) or s. 403.8532(3), which may be funded from any
168 funds received under a service contract with the department,
169 from the proceeds of bonds issued by the corporation, or from
170 any other funding sources obtained by the corporation.

171 (h) Sell all or any portion of the loans issued under s.
172 403.1835 or s. 403.8532 to accomplish the purposes of those
173 sections ~~this section and s. 403.1835~~.

174 (i) Make and execute any contracts, trust agreements, and

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175 other instruments and agreements necessary or convenient to
176 accomplish the purposes of the corporation and this section.

177 (j) Select, retain, and employ professionals, contractors,
178 or agents, which may include the Division of Bond Finance of the
179 State Board of Administration, as ~~are~~ necessary or convenient to
180 enable or assist the corporation in carrying out its purposes
181 and this section.

182 (k) Do any act or thing necessary or convenient to carry
183 out the purposes of the corporation and this section.

184 (4) The corporation shall evaluate all financial and market
185 conditions necessary and prudent for the purpose of making
186 sound, financially responsible, and cost-effective decisions in
187 order to secure additional funds to fulfill the purposes of this
188 section and ss. ~~s.~~ 403.1835 and 403.8532.

189 (5) The corporation may enter into one or more service
190 contracts with the department under which the corporation shall
191 provide services to the department in connection with financing
192 the functions, projects, and activities provided ~~for~~ in ss. ~~s.~~
193 403.1835 and 403.8532. The department may enter into one or more
194 service contracts with the corporation and provide for payments
195 under those contracts pursuant to s. 403.1835(9) or s. 403.8533,
196 subject to annual appropriation by the Legislature.

197 (a) The service contracts may provide for the transfer of
198 all or a portion of the funds in the Wastewater Treatment and
199 Stormwater Management Revolving Loan Trust Fund and the Drinking
200 Water Revolving Loan Trust Fund to the corporation for use by
201 the corporation for costs incurred by the corporation in its
202 operations, including, but not limited to, payment of debt
203 service, reserves, or other costs in relation to bonds issued by

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204 the corporation, for use by the corporation at the request of
205 the department to directly provide the types of local financial
206 assistance provided ~~for~~ in ss. s. 403.1835(3) and 403.8532(3),
207 or for payment of the administrative costs of the corporation.

208 (b) The department may not transfer funds under any service
209 contract with the corporation without a specific appropriation
210 for such purpose in the General Appropriations Act, except for
211 administrative expenses incurred by the State Board of
212 Administration or other expenses necessary under documents
213 authorizing or securing previously issued bonds of the
214 corporation. The service contracts may also provide for the
215 assignment or transfer to the corporation of any loans made by
216 the department.

217 (c) The service contracts may establish the operating
218 relationship between the department and the corporation and must
219 ~~shall~~ require the department to request the corporation to issue
220 bonds before any issuance of bonds by the corporation, to take
221 any actions necessary to enforce the agreements entered into
222 between the corporation and other parties, and to take all other
223 actions necessary to assist the corporation in its operations.

224 (d) In compliance with s. 287.0641 and other applicable
225 provisions of law, the obligations of the department under the
226 service contracts do not constitute a general obligation of the
227 state or a pledge of the faith and credit or taxing power of the
228 state, nor may the obligations be construed ~~in any manner~~ as an
229 obligation of the State Board of Administration or entities for
230 which it invests funds, or of the department except as provided
231 in this section as payable solely from amounts available under
232 any service contract between the corporation and the department,

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233 subject to appropriation.

234 (e) In compliance with this subsection and s. 287.0582,
235 service contracts must expressly include the following
236 statement: "The State of Florida's performance and obligation to
237 pay under this contract is contingent upon an annual
238 appropriation by the Legislature."

239 (6) The corporation may issue and incur notes, bonds,
240 certificates of indebtedness, or other obligations or evidences
241 of indebtedness payable from and secured by amounts received
242 from payment of loans and other moneys received by the
243 corporation, including, but not limited to, amounts payable to
244 the corporation by the department under a service contract
245 entered into under subsection (5). The proceeds of the bonds may
246 be used for the purpose of providing funds for projects and
247 activities provided ~~for~~ in subsection (1) or for refunding bonds
248 previously issued by the corporation. The corporation may select
249 a financing team and issue obligations through competitive
250 bidding or negotiated contracts, whichever is most cost-
251 effective. ~~Any~~ Such indebtedness of the corporation does not
252 constitute a debt or obligation of the state or a pledge of the
253 faith and credit or taxing power of the state.

254 (7) The corporation is exempt from taxation and assessments
255 of any nature whatsoever upon its income and any property,
256 assets, or revenues acquired, received, or used in the
257 furtherance of the purposes provided in ss. 403.1835, and
258 403.1838, and 403.8532. The obligations of the corporation
259 incurred under subsection (6) and the interest and income on the
260 obligations and all security agreements, letters of credit,
261 liquidity facilities, or other obligations or instruments

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262 arising out of, entered into in connection with, or given to
263 secure payment of the obligations are exempt from all taxation;
264 however, the exemption does not apply to any tax imposed by
265 chapter 220 on the interest, income, or profits on debt
266 obligations owned by corporations.

267 (8) The corporation shall validate any bonds issued under
268 this section, except refunding bonds, which may be validated at
269 the option of the corporation, by proceedings under chapter 75.
270 The validation complaint must be filed ~~only~~ in the Circuit Court
271 for Leon County. The notice required under s. 75.06 must be
272 published in Leon County, and the complaint and order of the
273 circuit court shall be served only on the State Attorney for the
274 Second Judicial Circuit. Sections 75.04(2) and 75.06(2) do not
275 apply to a validation complaint filed as authorized in this
276 subsection. The validation of the first bonds issued under this
277 section may be appealed to the Supreme Court, and the appeal
278 shall be handled on an expedited basis.

279 (9) The corporation and the department may ~~shall~~ not take
280 any action that ~~will~~ materially and adversely affects ~~affect~~ the
281 rights of holders of any obligations issued under this section
282 as long as the obligations are outstanding.

283 (10) The corporation is not a special district for purposes
284 of chapter 189 or a unit of local government for purposes of
285 part III of chapter 218. The provisions of chapters 120 and 215,
286 except the limitation on interest rates provided by s. 215.84,
287 which applies to obligations of the corporation issued under
288 this section, and part I of chapter 287, except ss. 287.0582 and
289 287.0641, do not apply to this section, the corporation ~~created~~
290 ~~in this section~~, the service contracts entered into under this

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291 section, or debt obligations issued by the corporation as
292 provided in this section.

293 (11) The benefits or earnings of the corporation may not
294 inure to the benefit of any private person, except persons
295 receiving grants and loans under s. 403.1835 or s. 403.8532.

296 (12) Upon dissolution of the corporation, title to all
297 property owned by the corporation reverts to the department.

298 (13) The corporation may contract with the State Board of
299 Administration to serve as trustee with respect to debt
300 obligations issued by the corporation as provided by this
301 section; to hold, administer, and invest proceeds of those debt
302 obligations and other funds of the corporation; and to perform
303 other services required by the corporation. The State Board of
304 Administration may perform these services and may contract with
305 others to provide all or a part of those services and to recover
306 the costs and expenses of providing those services.

307 Section 4. Subsections (2), (3), (9), and (14) of section
308 403.8532, Florida Statutes, are amended to read:

309 403.8532 Drinking water state revolving loan fund; use;
310 rules.-

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

312 (a) "Bonds" means bonds, certificates, or other obligations
313 of indebtedness issued by the corporation under this section and
314 s. 403.1837.

315 (b) "Corporation" means the Florida Water Pollution Control
316 and Drinking Water Financing Corporation created pursuant to s.
317 403.1837.

318 (c) ~~(a)~~ "Financially disadvantaged community" means the
319 service area of a project to be served by a public water system

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320 that meets criteria established by department rule and in
321 accordance with federal guidance.

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

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

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

336 (3) The department may ~~is authorized to make, or request~~
337 that the corporation make, loans, grants, and deposits to
338 community water systems, nonprofit transient noncommunity water
339 systems, and nonprofit nontransient noncommunity water systems
340 to assist them in planning, designing, and constructing public
341 water systems, unless such public water systems are for-profit
342 privately owned or investor-owned systems that regularly serve
343 1,500 service connections or more within a single certified or
344 franchised area. However, a for-profit privately owned or
345 investor-owned public water system that regularly serves 1,500
346 service connections or more within a single certified or
347 franchised area may qualify for a loan only if the proposed
348 project will result in the consolidation of two or more public

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349 water systems. The department may ~~is authorized to~~ provide loan
350 guarantees, ~~to~~ purchase loan insurance, and ~~to~~ refinance local
351 debt through the issue of new loans for projects approved by the
352 department. Public water systems may ~~are authorized to~~ borrow
353 funds made available pursuant to this section and may pledge any
354 revenues or other adequate security available to them to repay
355 any funds borrowed.

356 (a) The department shall administer loans so that amounts
357 credited to the Drinking Water Revolving Loan Trust Fund in any
358 fiscal year are reserved for the following purposes:

359 1. ~~(a)~~ At least 15 percent for ~~to~~ qualifying small public
360 water systems.

361 2. ~~(b)~~ Up to 15 percent for ~~to~~ qualifying financially
362 disadvantaged communities.

363 (b) ~~(c) However,~~ If an insufficient number of the projects
364 for which funds are reserved under this subsection ~~paragraph~~
365 have been submitted to the department at the time the funding
366 priority list authorized under this section is adopted, the
367 reservation of these funds ~~shall~~ no longer applies ~~apply~~. The
368 department may award the unreserved funds as otherwise provided
369 in this section.

370 (9) The department may adopt rules regarding the procedural
371 and contractual relationship between the department and the
372 corporation under s. 403.1837 and ~~is authorized to make rules~~
373 ~~necessary~~ to carry out the purposes of this section and the
374 federal Safe Drinking Water Act, as amended. Such rules shall:

375 (a) Set forth a priority system for loans based on public
376 health considerations, compliance with state and federal
377 requirements relating to public drinking water systems, and

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378 affordability. The priority system shall give special
379 consideration to ~~the following~~:

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

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

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

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

392 (c) Require evidence of credit worthiness and adequate
393 security, including an identification of revenues to be pledged,
394 and documentation of their sufficiency for loan repayment and
395 pledged revenue coverage, to ensure that each loan recipient can
396 meet its loan repayment requirements.

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

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

402 (14) ~~All moneys available for financial assistance under~~
403 ~~this section shall be deposited in~~ The Drinking Water Revolving
404 Loan Trust Fund established under s. 403.8533 shall be used
405 exclusively to carry out the purposes of this section. Any funds
406 that ~~therein which~~ are not needed on an immediate basis for

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407 financial assistance shall be invested pursuant to s. 215.49.
408 State revolving fund capitalization grants awarded by the
409 Federal Government, state matching funds, and investment
410 earnings thereon shall be deposited into the fund. The principal
411 and interest of all loans repaid and investment earnings thereon
412 shall be deposited into the fund.

413 Section 5. Section 403.8533, Florida Statutes, is amended
414 to read:

415 403.8533 Drinking Water Revolving Loan Trust Fund.—

416 (1) There is created the Drinking Water Revolving Loan
417 Trust Fund to be administered by the Department of Environmental
418 Protection for the purposes of:

419 (a) Funding for low-interest loans for planning,
420 engineering design, and construction of public drinking water
421 systems and improvements to such systems;

422 (b) Funding for compliance activities, operator
423 certification programs, and source water protection programs;
424 ~~and~~

425 (c) Funding for administering loans by the department; ~~and~~—

426 (d) Paying amounts payable under any service contract
427 entered into by the department under s. 403.1837, subject to
428 annual appropriation by the Legislature.

429 (2) The trust fund shall be used for the deposit of all
430 moneys awarded by the Federal Government to fund revolving loan
431 programs. All moneys in the fund that are not needed on an
432 immediate basis for loans shall be invested pursuant to s.
433 215.49. The principal and interest of all loans repaid and
434 investment earnings shall be deposited into this fund.

435 (3) Pursuant to s. 19(f)(3), Art. III of the State

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436 Constitution, the Drinking Water Revolving Loan Trust Fund is
437 exempt from the termination provisions of s. 19(f)(2), Art. III
438 of the State Constitution.

439 Section 6. This act shall take effect July 1, 2010.