

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: SB 678

INTRODUCER: Senator Montford

SUBJECT: Financial Assistance for Water and Wastewater Infrastructure

DATE: March 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.			AEN	
3.			AP	

I. Summary:

SB 678 amends ss. 403.1835, 403.1838, and 403.8532 F.S., to authorize the Department of Environmental Protection (DEP or the department) to disburse financial assistance under those sections based solely upon invoiced costs, without a requirement that the recipients request advance payment pursuant to s. 216.181(16), F.S. The recipient must submit proof of payment of invoiced costs before or concurrent with the recipient's next disbursement request.

The bill takes effect July 1, 2017.

II. Present Situation:

Overview

According to the Department of Environmental Protection (DEP or the department), this bill is one of their 2017 legislative priorities. The department uses money from the State Revolving Fund Program (SRF) to provide financial assistance pursuant to ss. 403.1835, 403.1838, and 403.8532, F.S., relating to water pollution control, small community sewer construction, and drinking water, respectively.

Historically, the SRF program operated in much the same way as a bank does with a loan for house construction. With a construction loan, the owner takes out a construction loan from a bank; their contractor does work and sends them an invoice; they give that invoice to their bank, who verifies the work was performed and approves a draw to pay the contractor. In the context of the SRF program, the local community's contractor performed work and invoiced the community; the local community sent the SRF program the invoice; the SRF program reviewed the invoice and approved payment to the local community, who then paid the contractor.

Then, in 2010 and 2013, statutes on state grant and contract procedures were amended to create safeguards. It was unclear whether these statutory changes applied to loan programs, however, both the department's Inspector General and the department's Division of Finance and Accounting raised a concern that, without explicit statutory language indicating the SRF loan program could operate based on invoiced costs, the program should be operating as a cost reimbursement program in accordance with s. 216.181(16), F.S. Under a cost reimbursement program:

- The local community takes out a loan from the SRF program.
- The local community's contractor performs work and sends the local community the invoice.
- The local community pays that invoice and then sends the SRF program proof that they already paid the contractor.
- The SRF program then reimburses the costs the community already paid to its contractor.

This is burdensome on small communities that often cannot afford to front the funding to the contractors, so for those local communities that cannot afford to front the money to pay the contractors, the SRF program is currently proceeding as follows:

- The local community must fill out advance payment request forms, which must be approved by the SRF program, the department's Division of Finance and Accounting, and the Department of Financial Services.
- The local community's loan agreement must be amended to add advance payment language, and the amended agreement must be signed by both the local community and the department.
- When the amendment is finalized, the SRF program can advance the funding to cover invoiced costs (i.e. operate as it did historically).
- Each subsequent payment request must demonstrate that the contractor's prior invoice was paid.
- The local community must also file a quarterly report on any interest earned on the advance payments received.

The department states that SRF has program accountability measures in place to assure the program is sound and loans are adequately monitored:

- SRF program's project manager makes site visits to inspect progress and conduct a closeout inspection at project completion.
- Sponsors must submit annual audits.
- The U.S. Environmental Protection Agency conducts annual SRF program audits.
- An independent auditor conducts annual financial audits.
- DEP's Inspector General's Office conducts ongoing loan agreement audits.
- DEP maintains separate staff to manage SRF projects and to qualify loan recipients based upon financial review.
- It also has the department's project managers and financial managers conduct separate review of requests for payment.

Accordingly, DEP wants to allow disbursement of loan funds based solely upon invoiced costs without any requirement to request advance payment pursuant to s. 216.181(16), F.S., to reduce the burden on loan recipients, particularly small and financially disadvantaged communities.

Section 216.181(16), F.S.

Section 216.181(16), F.S., authorizes advance payment of funds provided in any specific appropriation in the General Appropriations Act if the Act specifically so provides. More specifically, if the General Appropriations Act or another law expressly authorizes an agency or the judicial branch to make advances, it may do so for program startup or for contracted services, but such disbursements are limited to other governmental entities and not-for-profit corporations. Additionally, the amount of an initial disbursement cannot exceed the expected cash needs of the contractor or recipient within the initial 3 months, and all subsequent disbursements can be made only on a reimbursement basis. As an alternative, a recipient can request that the Chief Financial Officer (CFO), after consultation with the legislative appropriations committees, advance funds beyond a three-month requirement if it is determined to be consistent with the intent of the approved operating budget.

DEP Financing Programs***Water Pollution Control***

Section 403.1835, F.S., establishes the Wastewater Treatment and Stormwater Management Revolving Loan Trust Fund for DEP to use to fund water pollution control projects that are eligible under the Federal Water Pollution Control Act. Eligible projects include, but are not limited to, planning, designing, constructing, and implementing of wastewater management systems, stormwater management systems, nonpoint source pollution management systems, and estuary conservation and management.

DEP must prioritize eligible projects according to the extent each project is intended to remove, mitigate, or prevent adverse effects on surface or ground water quality and public health. It must consider the relative costs of achieving environmental and public health benefits in assigning priorities. The department must, by rule, adopt a priority system that gives priority to projects that:

- Eliminate public health hazards;
- Enable compliance with laws requiring the elimination of discharges to specific water bodies, including requirements regarding domestic wastewater ocean outfalls;
- Assist in the implementation of total maximum daily loads;
- Enable compliance with other pollution control requirements, including, but not limited to, toxics control, wastewater residuals management, and reduction of nutrients and bacteria;
- Assist in the implementation of surface water improvement and management plans and pollutant load reduction goals developed under state water policy;
- Promote reclaimed water reuse;
- Eliminate failing onsite sewage treatment and disposal systems or those that are causing environmental damage; or
- Reduce pollutants to and otherwise promote the restoration of Florida's surface and ground waters.

To apply for a loan, an entity must:

- Submit evidence of credit worthiness, loan security, and a loan repayment schedule in support of the request for a loan.
- Submit plans and specifications and evidence of permissibility in support of a request for funding of construction or other activities requiring a permit from the department.
- Provide assurance that records will be kept using generally accepted accounting principles and that the department, the Auditor General, or their agents will have access to all records pertaining to the financial assistance provided.
- Provide assurance that the subject facilities, systems, or activities will be properly operated and maintained.
- Identify the revenues to be pledged and document their sufficiency for loan repayment and pledged revenue coverage in support of a request for a loan.
- Provide assurance that financial information will be provided as required by the department.
- Provide assurance that a project audit prepared by an independent certified public accountant upon project completion will be submitted to the department in support of a request for a grant.
- Submit project planning documentation demonstrating a cost comparison of alternative methods, environmental soundness, public participation, and financial feasibility for any proposed project or activity.

If a local governmental agency becomes delinquent on its loan, the department must certify the delinquency to the CFO, who must forward the delinquent amount to the department from any unobligated funds due to the local governmental agency under any revenue-sharing or tax-sharing fund. The department may also pursue any other available remedies, may impose a penalty not to exceed 18 percent per annum on the amount due, and may charge the cost to handle and process the debt.

If a non-governmental loan recipient defaults on a loan, the department may pursue any remedy available to it at law or in equity, may impose a penalty not to exceed 18 percent per annum on any amount due, and may charge the cost to handle and process the debt.

The department must prepare an annual report detailing the amount of grants, amount loaned, interest earned, grant allocations, and loans outstanding at the end of each fiscal year.

Small Community Sewer Construction

Section 403.1838, F.S., is the Small Community Sewer Construction Assistance Act. The act requires the department to use funds specifically appropriated to award grants to assist financially disadvantaged small communities¹ with their needs for adequate sewer facilities. The department may provide grants for up to 100 percent of the costs of planning, designing, constructing, upgrading, or replacing wastewater collection, transmission, treatment, disposal, and reuse facilities, including necessary legal and administrative expenses.

¹ A “financially disadvantaged small community” is a county, municipality, or special district that has a population of 10,000 or fewer, according to the latest decennial census, and a per capita annual income less than the state per capita annual income as determined by the United States Department of Commerce.

In administering the loan program, the department is to be governed by rules of the Environmental Regulation Commission,² which must:

- Require that projects to plan, design, construct, upgrade, or replace wastewater collection, transmission, treatment, disposal, and reuse facilities be cost-effective, environmentally sound, permissible, and implementable.
- Require appropriate user charges, connection fees, and other charges sufficient to ensure the long-term operation, maintenance, and replacement of the facilities constructed under each grant.
- Require that grant applications be submitted on appropriate forms with appropriate supporting documentation, and require records to be maintained.
- Establish a system to determine eligibility of grant applications.
- Establish a system to determine the relative priority of grant applications. The system must consider public health protection and water pollution abatement.
- Establish requirements for competitive procurement of engineering and construction services, materials, and equipment.
- Provide for termination of grants when program requirements are not met.

The department must perform adequate overview of each grant, including technical review, regular inspections, disbursement approvals, and auditing.

Drinking Water

Section 403.8533, F.S., creates the Drinking Water Revolving Loan Trust Fund to be the depository for all moneys awarded by the Federal Government to fund revolving loan programs. The Department of Environmental Protection is to administer the trust fund for the purposes of:

- Funding for low-interest loans for planning, engineering design, and construction of public drinking water systems and improvements to such systems;
- Funding for compliance activities, operator certification programs, and source water protection programs;
- Funding for administering loans by the department; and
- Paying amounts payable under any service contract entered into by the department and the Florida Water Pollution Control Financing Corporation, subject to annual appropriation.

Section 403.8532, F.S., provides for the use of the Drinking Water Revolving Loan Trust Fund. The fund is to be used exclusively to establish infrastructure financing, technical assistance, and source water protection programs to assist public drinking water systems in achieving and maintaining compliance with the Florida Safe Drinking Water Act and the federal Safe Drinking

² Section 20.255(6), F.S., creates the Environmental Regulation Commission (commission) as a part of the Department of Environmental Protection. The commission is composed of seven residents of this state appointed by the Governor and subject to confirmation by the Senate. Membership must provide reasonable representation from all sections of the state, and must be representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community who have substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering. Terms are 4 years. The Governor appoints the chair, and the members elect the vice chair. Members serve without compensation, but receive travel and per diem. The department furnishes administrative, personnel, and other necessary support services. The commission may employ independent counsel and contract for the services of outside technical consultants.

Water Act and to conserve and protect the quality of waters of the state. The department may use the fund to:

- Make, loans, grants, and deposits to community water systems; for-profit, privately owned, or investor-owned water systems; nonprofit, transient, noncommunity water systems; and nonprofit, nontransient, noncommunity water systems to assist them in planning, designing, and constructing public water systems.³
- Provide loan guarantees, purchase loan insurance, and refinance local debt through the issue of new loans for projects approved by the department.
- Make loans to public water systems that pledge any available revenues or other adequate security to repay any funds borrowed.

Department rules must:

- Set forth a priority system for loans based on public health considerations, compliance with state and federal requirements relating to public drinking water systems, and affordability. The priority system shall give special consideration to:
 - Projects that provide for the development of alternative drinking water supply projects and management techniques in areas where existing source waters are limited or threatened by saltwater intrusion, excessive drawdowns, contamination, or other problems;
 - Projects that provide for a dependable, sustainable supply of drinking water and that are not otherwise financially feasible; and
 - Projects that contribute to the sustainability of regional water sources.
- Establish the requirements for the award and repayment of financial assistance.
- Require evidence of credit worthiness and adequate security, including an identification of revenues to be pledged, and documentation of their sufficiency for loan repayment and pledged revenue coverage, to ensure that each loan recipient can meet its loan repayment requirements.
- Require each project receiving financial assistance to be cost-effective, environmentally sound, implementable, and self-supporting.
- Implement other provisions of the federal Safe Drinking Water Act, as amended.

The statute has special provisions for small public water systems⁴ and financially disadvantaged communities.⁵ The department may provide financial assistance to financially disadvantaged communities for the purpose of planning, designing, and constructing public water systems. This assistance may include the forgiveness of loan principal. Additionally, in any fiscal year, the department must reserve from the amounts credited to the Drinking Water Revolving Loan Trust Fund:

- At least 15 percent for qualifying small public water systems.
- Up to 15 percent for qualifying financially disadvantaged communities.

³ “Public water system” means all facilities, including land, necessary for the treatment and distribution of water for human consumption. Such systems may be publicly owned, privately owned, investor-owned, or cooperatively held.

⁴ “Small public water system” means a public water system that regularly serves fewer than 10,000 people.

⁵ “Financially disadvantaged community” means the service area of a project to be served by a public water system that meets criteria established by department rule and in accordance with federal guidance.

An applicant for a loan must, at a minimum:

- Provide a repayment schedule.
- Submit evidence of the permissibility or implementability of the project proposed for financial assistance.
- Submit plans and specifications, biddable contract documents, or other documentation of appropriate procurement of goods and services.
- Provide assurance that records will be kept using generally accepted accounting principles and that the department or its agents and the Auditor General will have access to all records pertaining to the loan.
- Provide assurance that the public water system will be properly operated and maintained in order to achieve or maintain compliance with the requirements of the Florida Safe Drinking Water Act and the federal Safe Drinking Water Act, as amended.
- Document that the public water system will be self-supporting.

The term of loans may not exceed 30 years.

The department may require reasonable service fees on loans made to public water systems to ensure that the trust fund will be operated in perpetuity. Service fees cannot be less than 2 percent nor greater than 4 percent of the loan amount exclusive of the service fee. Service fee revenues must be deposited into the department's Grants and Donations Trust Fund, and the fee revenues and interest earnings must be used exclusively to carry out the purposes of this section.

If a local governmental agency⁶ defaults, the department must certify the default to the Chief Financial Officer, who must forward the delinquent amount to the department from any unobligated funds due to the local governmental agency under any revenue-sharing or tax-sharing fund. The department may also pursue any other available remedies, including accelerating loan repayments, eliminating all or part of the interest rate subsidy on the loan, and court appointment of a receiver to manage the public water system.

If a non-governmental loan recipient defaults on a loan, the department may pursue any remedy available to it at law.

The department may impose a penalty of 6 percent of the amount due for delinquent loan payments, in addition to charging the cost to handle and process the debt.

The department also is authorized to terminate or rescind a financial assistance agreement when the recipient fails to comply with the terms and conditions of the agreement.

The department may conduct an audit of the loan project upon completion, or may require submission of a separate project audit prepared by an independent certified public accountant.

⁶ "Local governmental agency" means any municipality, county, district, or authority, or any agency thereof, or a combination of two or more of the foregoing acting jointly in connection with a project, having jurisdiction over a public water system.

The department shall prepare a report at the end of each fiscal year, detailing the financial assistance provided under this section, service fees collected, interest earned, and loans outstanding.

III. Effect of Proposed Changes:

The bill amends ss. 403.1835, 403.1838, and 403.8532 F.S., to authorize DEP to disburse financial assistance under those sections based solely upon invoiced costs, without a requirement that the recipients request advance payment pursuant to s. 216.181(16), F.S. The recipient must submit proof of payment of invoiced costs before or concurrent with the recipient's next disbursement request.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

According to DEP, the bill will reduce the burden on loan recipients, particularly small and financially disadvantaged communities, thus saving them time and money.

C. Government Sector Impact:

The bill should reduce workload for DEP and the CFO's office, thus saving them time and money.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 403.1835, 403.1838, and 403.8532.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
