

Tab 1	SB 324 by Legg ; (Similar to CS/H 0347) Utility Projects
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Tab 2	CS/SB 534 by EP, Hays ; (Similar to CS/H 0491) Water and Wastewater
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
COMMUNICATIONS, ENERGY, AND PUBLIC UTILITIES
Senator Grimsley, Chair
Senator Hukill, Vice Chair

MEETING DATE: Tuesday, January 12, 2016
TIME: 2:00—4:00 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Grimsley, Chair; Senator Hukill, Vice Chair; Senators Abruzzo, Bradley, Dean, Evers, Garcia, Gibson, Hutson, and Sachs

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 324 Legg (Similar CS/H 347)	Utility Projects; Creating the "Utility Cost Containment Bond Act"; authorizing certain local governmental entities to finance the costs of a utility project by issuing utility cost containment bonds upon application by a local agency; authorizing an authority to issue utility cost containment bonds for specified purposes related to utility projects; requiring the local agency or its publicly owned utility to collect the utility project charge, etc. CU 01/12/2016 Favorable FT AP	Favorable Yeas 8 Nays 0
2	CS/SB 534 Environmental Preservation and Conservation / Hays (Similar CS/H 491)	Water and Wastewater; Creating a provision requiring the Division of Bond Finance of the State Board of Administration to review the allocation of private activity bonds to determine the availability of additional allocation and reallocation of bonds for water and wastewater infrastructure projects; authorizing the Department of Environmental Protection to require or request that the Florida Water Pollution Control Financing Corporation make loans, grants, and deposits to for-profit, privately owned, or investor-owned water systems, etc. EP 11/18/2015 Fav/CS CU 01/12/2016 Fav/CS AP	Fav/CS Yeas 8 Nays 0

Other Related Meeting Documents

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 324

INTRODUCER: Senator Legg

SUBJECT: Utility Projects

DATE: January 12, 2015

REVISED: 01/14/16

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

I. Summary:

SB 324 establishes a new mechanism - utility cost containment bonds - available to an intergovernmental authority to finance projects related to water or wastewater service on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity. Among the requirements for use of this financing mechanism is a requirement that a utility project charge be created, levying a charge on utility customers that is used as security for payment of the bonds. This security is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate and more favorable terms for bonds issued to fund eligible projects.

Briefly, the financing mechanism created by the bill operates as follows:

- A local agency applies to the intergovernmental utility authority to finance the costs of an eligible project using utility cost containment bonds.
- The intergovernmental utility authority adopts a financing resolution, setting forth certain requirements for issuance of the bonds. (To finance the project, the intergovernmental utility authority may form a single-purpose limited liability company or, together with two or more of its members or other public agencies, may create a new single-purpose entity to perform the duties and responsibilities of the authority under the bill.)
- The bonds are secured by the revenues from a separate utility project charge stated on the bill of each present and future customer of the services specified in the financing resolution.
- This charge is imposed by the intergovernmental utility authority, but, pursuant to a servicing agreement, is collected by the local government.
- The moneys from the charge are transferred to the intergovernmental utility authority and held in trust for the benefit of the bondholders. These moneys are not considered revenues of the local government but are treated as revenues of the intergovernmental utility authority.

The Florida Governmental Utility Authority (FGUA) is the only intergovernmental authority that currently meets the criteria to provide financing under the bill. Thus, the bill expands FGUA's original purpose of owning and operating a public utility system.

II. Present Situation:

Financing Authority of Local Government Entities for Public Works Projects

Local governments are authorized under current law to issue bonds, revenue certificates, and other forms of indebtedness related to the provision of public works projects.

Upon a resolution, a county may issue water revenue bonds, sewer revenue bonds, or general obligation bonds to pay all or part of the cost to purchase, construct, improve, extend, enlarge, or reconstruct water supply systems or sewage disposal systems.¹ Water revenue bonds are payable solely from water service charges.² Sewer revenue bonds are payable solely from sewer service charges.³ Neither type of revenue bond pledges the property, credit, or general tax revenue of the county. General obligation bonds are payable from ad valorem taxes alone or from ad valorem taxes with an additional secured pledge of water service charges, sewer service charges, special assessments, or a combination of these sources.⁴ Issuance of general obligation bonds, as required by the State Constitution,⁵ requires approval by referendum, and a county is required to levy annually a special tax upon all taxable property within the county to pay the principle and interest as it becomes due.⁶ Counties may also create special water and sewer districts to serve unincorporated areas, and the district's board may issue revenue bonds to finance all or part of the cost of a water system, sewer system, or both. Such bonds are payable from the revenues derived from operation of the utility system as provided by law and the authorizing resolution of the district's board.⁷

Upon approval of a municipality's governing body, a municipality may issue revenue bonds, general obligation bonds, ad valorem bonds, or improvement bonds to finance capital expenditures made for a public purpose. Revenue bonds are payable from sources other than ad valorem taxes and are not secured by a pledge of the property, credit, or general tax revenue of the municipality. General obligation bonds are payable from any special taxes levied for the purpose of repayment and any other sources as provided by the authorizing ordinance or resolution. Such bonds are secured by the full faith and credit and taxing power of the municipality and may require approval by referendum. Ad valorem bonds are payable from the

¹ Section 153.03(1) and (2), F.S.

² Section 153.02(9), F.S.

³ Section 153.02(10), F.S.

⁴ Section 153.02(11), F.S.

⁵ Section 12, Article VII, of the State Constitution (providing that counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation only "to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation.")

⁶ Section 153.07, F.S.

⁷ Section 153.63(1), F.S. Such bonds may also be secured by the pledge of special assessments or the full faith and credit of the district.

proceeds of ad valorem taxes and, as required by the State Constitution,⁸ require approval by referendum. Improvement bonds are special obligations payable solely from the proceeds of special assessments levied for a project.⁹

Further, a municipality may issue mortgage revenue certificates or debentures to acquire, construct, or extend public works, including, among other things, water and alternative water supply facilities, sewage collection and disposal facilities, gas plants and distribution systems, and stormwater projects.¹⁰ These instruments constitute a lien only against the property and revenue of the utility. These instruments may not impose any tax liability upon any real or personal property in the municipality and may not constitute a debt against the issuing municipality.¹¹

The Division of Bond Finance (DBF) of the State Board of Administration provides information to, and collects information from, units of local government¹² concerning the issuance of bonds by such entities.¹³ Each unit of local government must provide DBF a complete description of its new general obligation bonds and revenue bonds and must provide advanced notice of the impending sale of a new issue of bonds.¹⁴ According to DBF, a public utility generally finances projects with revenue bonds, securing the debt with a pledge of net revenues of the utility system. These net revenues consist of the income of the public utility remaining after paying expenses necessary to operate and maintain the utility. DBF notes that this current practice requires the efficient operation of the utility system to assure that sufficient net revenues are available to pay debt service.

Creation and Financing Authority of Intergovernmental Utility Authorities

The Florida Interlocal Cooperation Act of 1969 (Act) is intended to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.¹⁵ The Act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.¹⁶ Under such an agreement, the local governmental units may create a separate legal or administrative entity “to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and

⁸ *Supra*, note 5.

⁹ Section 166.101, F.S., et seq.

¹⁰ Sections 180.06 and 180.08, F.S.

¹¹ Section 180.08, F.S.

¹² “Unit of local government” is defined in s. 218.369, F.S., as “a county, municipality, special district, district school board, local agency, authority, or consolidated city-county government or any other local governmental body or public body corporate and politic authorized or created by general or special law and granted the power to issue general obligation or revenue bonds.”

¹³ Section 218.37, F.S.

¹⁴ *Id.* DBF is authorized only to collect information concerning these bonds; it does not exercise any substantive authority to review or approve these transactions.

¹⁵ Section 163.01(2), F.S.

¹⁶ Section 163.01(5), F.S.

other factors influencing the needs and development of local communities.”¹⁷ A separate entity created by an interlocal agreement possesses the authority specified in the agreement.¹⁸ Among the authority granted such an entity is the power to authorize, issue, and sell bonds.¹⁹

The Act specifically addresses the establishment of such entities to provide water service or sewer service (hereinafter referred to as “intergovernmental utility authorities” or “IGUAs”). The Act authorizes the creation of IGUAs to acquire, own, construct, improve, operate, and manage public facilities relating to a governmental function or purpose, including water and alternative water supply facilities, wastewater facilities, and water reuse facilities.²⁰ An IGUA created under this provision may also finance such facilities on behalf of any person. The membership of an IGUA created under this provision is limited to two or more special districts, municipalities, or counties of the state. The IGUA’s facilities may serve populations “within or outside of the members of the entity” but not within the service area of an existing utility system. IGUAs are not subject to regulation by the Public Service Commission.²¹

An IGUA created under s. 163.07(g), F.S., may finance or refinance the acquisition, construction, expansion, and improvement of facilities through the issuance of bonds, notes, or other obligations. Except as may be limited by the interlocal agreement under which the entity is created, all of the privileges, benefits, powers, and terms of the statutes relating to counties²² and municipalities²³ are fully applicable to the IGUA. Bonds, notes, and other obligations issued by the IGUA are issued on behalf of the public agencies that are members of the IGUA.²⁴

The Florida Governmental Utility Authority (FGUA) was formed in 1999 pursuant to s. 163.01(7)(g), F.S. As noted on its website, FGUA is a separate legal entity created by interlocal agreement with the limited purpose of owning and operating a public utility system. It provides retail water and wastewater utility services in several portions of the state. The FGUA consists of 14 counties: Alachua, Citrus, Collier, Hardee, Hillsborough, Lake, Lee, Marion, Orange, Pasco, Polk, Putnam, Seminole, and Volusia.²⁵ FGUA’s governing board is comprised of seven members representing Citrus, DeSoto, Hendry, Lee, Marion, Pasco, and Polk counties.²⁶ Each board member is a county employee appointed by their local government.²⁷

Utility Securitization Financing in Florida

Following the severe tropical storm seasons that Florida faced in 2004 and 2005, the Legislature created a new financing mechanism, referred to as securitization, by which investor-owned

¹⁷ Section 163.01(2), F.S.

¹⁸ Section 163.01(7)(b), F.S.

¹⁹ Section 163.01(7)(d), F.S.

²⁰ Section 163.01(7)(g), F.S.

²¹ Section 367.022(2), F.S.

²² Section 125.01, F.S.

²³ Section 166.021, F.S.

²⁴ Section 163.01(7)(g)7., F.S.

²⁵ <http://www.fgua.com> (See “History,” last accessed January 11, 2016).

²⁶ <http://www.fgua.com> (See “the board,” last accessed January 11, 2016).

²⁷ *Id.*

electric utilities could petition the Public Service Commission for issuance of a financing order authorizing the utility to issue bonds through a separate legal entity.²⁸ If granted, the financing order was required to establish a nonbypassable charge to the utility's customers in order to provide a secure stream of revenues to the separate legal entity from which the bonds would be paid. The purpose of this mechanism was to allow the utilities access to low-cost financing to cover storm recovery costs and replenishment of depleted storm reserve funds. This mechanism has been implemented in only one instance.²⁹

III. Effect of Proposed Changes:

Summary

The bill establishes a new mechanism – utility cost containment bonds – available to an intergovernmental authority to finance projects related to water or wastewater service on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity. Among the requirements for use of this financing mechanism is a requirement that a utility project charge be created, levying a charge on utility customers that is used as security for payment of the bonds. This is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate and more favorable terms for bonds issued to fund eligible projects.

Briefly, the financing mechanism created by the bill operates as follows:

- A local agency applies to the intergovernmental utility authority to finance the costs of an eligible project using utility cost containment bonds.
- The intergovernmental utility authority adopts a financing resolution, setting forth certain requirements for issuance of the bonds. (To finance the project, the intergovernmental utility authority may form a single-purpose limited liability company or, together with two or more of its members or other public agencies, may create a new single-purpose entity to perform the duties and responsibilities of the authority under the bill.)
- The bonds are secured by the revenues from a separate utility project charge stated on the bill of each present and future customer of the services specified in the financing resolution.
- This charge is imposed by the intergovernmental utility authority, but, pursuant to a servicing agreement, is collected by the local government.
- The moneys from the charge are transferred to the intergovernmental utility authority and held in trust for the benefit of the bondholders. These moneys are not considered revenues of the local government but are treated as revenues of the intergovernmental utility authority.

The FGUA is the only intergovernmental authority that currently meets the criteria to provide financing under the bill. Thus, the bill expands FGUA's original purpose of owning and operating a public utility system.

²⁸ Section 366.8260, F.S.

²⁹ Docket No. 060038-EI, Florida Public Service Commission.

Definitions

The bill creates definitions, including the following.

“Authority” means an entity, including a successor to the powers and functions of such entity, created pursuant to s. 163.01(7)(g), F.S., that provides public utility services and whose membership consists of at least three counties.³⁰ The term includes any successor to the powers and functions of such an entity.

“Cost,” as applied to a utility project or portion of a utility project financed under this section, means any of the following:

- Any part of the expense of constructing, renovating, or acquiring lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a utility project;
- The expense of demolishing or removing any buildings or structures on acquired land, including the expense of acquiring any lands to which the buildings or structures may be moved, and the cost of all machinery and equipment used for the demolition or removal;
- Finance charges;
- Interest, as determined by the authority;
- Provisions for working capital and debt service reserves;
- Expenses for extensions, enlargements, additions, replacements, renovations, and improvements;
- Expenses for architectural, engineering, financial, accounting, and legal services, and for plans, specifications, estimates, and administration; and
- Any other expenses necessary or incidental to determining the feasibility of constructing a utility project or incidental to the construction, acquisition, or financing of a utility project.

“Customer” means a person receiving water or wastewater service from a publicly owned utility.

“Financing cost” means any of the following:

- Interest and redemption premiums that are payable on utility cost containment bonds;
- The cost of retiring the principal of utility cost containment bonds, whether at maturity, including acceleration of maturity upon an event of default, or upon redemption, including sinking fund redemption;
- The cost related to issuing or servicing utility cost containment bonds, including payment under an interest rate swap agreement, and any types of fee;
- A payment or expense associated with a bond insurance policy; financial guaranty; contract, agreement, or other credit or liquidity enhancement for bonds; or contract, agreement, or other financial agreement entered into in connection with utility cost containment bonds;
- Any coverage charges; and
- The funding of one or more reserve accounts related to utility cost containment bonds.

³⁰ Only the Florida Governmental Utility Authority currently meets this definition.

“Local agency” means a member of the authority, or an agency or subdivision of that member, that is sponsoring or refinancing a utility project, or any municipality, county, authority, special district, public corporation, regional water authority, or other governmental entity of the state that is sponsoring or refinancing a utility project.³¹

“Public utility services” means water or wastewater services provided by a publicly owned utility. The term does not include communications services as defined in s. 202.11, F.S., Internet, or cable services.

“Revenue” means income and receipts of the authority related to the financing of utility projects and issuance of utility cost containment bonds, including any of the following:

- Bond purchase agreements;
- Bonds acquired by the authority;
- Installment sale agreements and other revenue-producing agreements entered into by the authority;
- Utility projects financed or refinanced by the authority;
- Grants and other sources of income;
- Moneys paid by a local agency;
- Interlocal agreements with a local agency, including all service agreements;
- Interest or other income from any investment of money in any fund or account established for the payment of principal, interest, or premiums on utility cost containment bonds, or the deposit of proceeds of utility cost containment bonds.

“Utility project” means the acquisition, construction, installation, retrofitting, rebuilding, or other addition to or improvement of any equipment, device, structure, process, facility, technology, rights, or property located in or out of the state that is used in connection with the operations of a publicly owned utility.

“Utility project charge” means a charge levied on customers of a publicly owned utility to pay the financing costs of utility cost containment bonds issued pursuant to the bill. The term includes any authorized adjustment to the utility project charge.

“Utility project property” means the property right created by the bill. The term does not include any interest in a customer’s real or personal property, but does include the right, title, and interest of an authority in any of the following:

- The financing resolution, the utility project charge, and any adjustment to the utility project charge;
- The financing costs of the utility cost containment bonds and all revenues, and all collections, claims, payments, moneys, or proceeds for, or arising from, the utility project charge; and
- All rights to obtain adjustments to the utility project charge pursuant to the bill.

³¹ Because FGUA provides “public utility services” (water and wastewater services) that may be supported by a financeable “utility project,” it appears to qualify as an authority or other governmental entity of the state and would meet the definition of a “local agency.” Thus, FGUA could be both an “authority” and a “local agency” under the bill.

Local Agency Authority

The bonding process is initiated by the governing body of the local agency holding a public meeting and determining:

- The project to be financed is a utility project;³²
- The local agency will finance costs of the utility project and the associated financing costs will be paid from utility project property (i.e., the charge to utility customers);
- Based on the best information available, the rates charged to the local agency's retail customers by the publicly owned utility, including the utility project charge resulting from the financing of the utility project with utility cost containment bonds, are expected to be lower than the rates that would be charged if the project was financed with bonds payable from revenues of the publicly owned utility.

After such meeting and determinations, the local agency may apply to the intergovernmental utility authority to finance the costs of a utility project using the proceeds of utility cost containment bonds. In its application, the local agency must specify the utility project to be financed, the maximum principal amount, the maximum interest rate, and the maximum stated terms of the utility cost containment bonds.

The Intergovernmental Utility Authority

The bill authorizes an intergovernmental utility authority to issue utility cost containment bonds to finance or refinance utility projects; to refinance debt of a local agency previously issued to finance or refinance such projects, if the refinancing results in present value savings; or, upon approval of a local agency, to refinance previously issued utility cost containment bonds.

To finance a utility project, the authority may form a single-purpose limited liability company and authorize the company to adopt the financing resolution. Alternatively, the authority and two or more of its members or other public agencies may create a new single-purpose entity by interlocal agreement. Either type of entity may be created by the authority solely for the purposes of performing the duties and responsibilities of the authority and is treated as an authority for purposes of the bill.

With respect to regional water projects, the authority must work with local agencies that request assistance to determine the most cost-effective manner of financing. If these entities determine that issuance of utility cost containment bonds will result in lower financing costs for a project, the authority must issue the bonds at the request of the local agencies.

The governing body of an authority that is financing the costs of an eligible utility project must adopt a financing resolution and impose a utility project charge. All provisions of the financing resolution are binding on the authority. The financing resolution must include the following:

- A description of the financial calculation method the authority will use to determine the utility project charge. The calculation method must include a periodic adjustment

³² Under the bill, this determination is deemed "final and conclusive."

methodology to be applied at least annually to the utility project charge. The adjustment methodology may not be changed. The authority must establish the allocation of the utility project charge among classes of customers of the publicly owned utility. The decisions of the authority are final and conclusive.

- A requirement that each customer in the class or classes of customers specified in the financing resolution who receives water or wastewater service through the publicly owned utility must pay the utility project charge, regardless of whether the customer has an agreement to receive water or wastewater service from a person other than the publicly owned utility.
- A requirement that the utility project charge be charged separately from other charges on the bill of each customer of the utility that is in the class or classes of customers specified in the financing resolution.
- A requirement that the authority enter into a servicing agreement with the local agency or its publicly owned utility to collect the utility project charge.

The authority may require in the financing resolution that, in the event of default by the local agency or its publicly owned utility, the authority must order the sequestration and payment to the beneficiaries of the revenues arising from the utility project property (discussed in detail, below) if the beneficiaries apply for payment of the revenues under a lien. This may apply to a successor entity as well. If a local agency that has outstanding utility cost containment bonds ceases to operate a water or wastewater utility, directly or through its publicly owned utility, any successor entity must assume and perform all obligations of the local agency and its publicly owned utility and assume the servicing agreement with the authority while the utility cost containment bonds remain outstanding.

Utility Project Charges

In the financing resolution, the authority must impose a utility project charge sufficient to ensure timely payment of all financing costs with respect to utility cost containment bonds. The charge must be based on estimates of water or wastewater service usage. The authority may require information from the local agency or its publicly owned utility to establish the charge.

The utility project charge is a nonbypassable charge on all present and future customers of the publicly owned utility in the class or classes of customers specified in the financing resolution at the time of its adoption. If a customer who is subject to the charge enters into an agreement to purchase water or wastewater service from a supplier other than the publicly owned utility, the customer remains liable for payment of the charge if the customer received any service or benefit from the utility after the date the charge was imposed (for example, if the customer gets a well or if a competitor were allowed to also serve the area).

At least annually, and at any other interval specified in the financing resolution and related documents, the authority must determine whether adjustments to the utility project charge are required and, if so, make the necessary adjustments to correct for any overcollection or undercollection of financing costs from the charge or to otherwise ensure timely payment of the financing costs of the bonds, including payment of any required debt service coverage. The

authority may require information from the local agency or its publicly owned utility to adjust the charge. If an adjustment is deemed necessary, it must be made using the methodology specified in the financing resolution. An adjustment may not impose the charge upon a class of customers not previously subject to the charge under the financing resolution.

Revenues from a utility project charge are deemed special revenues of the authority and do not constitute revenue of the local agency or its publicly owned utility for any purpose. The local agency or its publicly owned utility must act as a servicing agent for collecting the charge pursuant to a servicing agreement to be required by the financing resolution. The local agency or its publicly owned utility is authorized to use its established collection policies and remedies under law to enforce collection of the charge. The money collected must be held in trust for the exclusive benefit of the persons entitled to have the financing costs paid from the utility project charge.

The timely and complete payment of all utility project charges by the customer is a condition of receiving water or wastewater service from the publicly owned utility. A customer liable for a utility project charge is not permitted to withhold payment of any portion of the charge.

The pledge of a utility project charge to secure payment of utility cost containment bonds is irrevocable, and the state or any other entity is not permitted to reduce, impair, or otherwise adjust the utility project charge, except for the periodic adjustments that the authority is required to make pursuant to the financing resolution.

Utility Project Property

The utility project charge constitutes utility project property when a financing resolution authorizing the charge becomes effective. Utility project property constitutes property, including contracts that secure utility cost containment bonds, whether or not the revenues and proceeds arising with respect to the utility project property have accrued. The utility project property continuously exists as property for all purposes for the period provided in the financing resolution or until all financing costs with respect to the related utility cost containment bonds are paid in full, whichever occurs first.

Upon the effective date of the financing resolution, the utility project property is subject to a first priority statutory lien to secure the payment of the utility cost containment bonds. The lien secures the payment of all financing costs that exist at that time or that subsequently arise to the holders of the bonds, the trustee or representative for the holders of the bonds, and any other entity specified in the financing resolution or the documents relating to the bonds. The lien attaches to the utility project property regardless of the current ownership of the utility project property, including any local agency or its publicly owned utility, the authority, or other person.

Upon the effective date of the financing resolution, the lien is valid and enforceable against the owner of the utility project property and all third parties, and additional public notice is not required. The lien is a continuously perfected lien on all revenues and proceeds generated from the utility project property, regardless of whether the revenues or proceeds have accrued.

All revenues with respect to utility project property related to utility cost containment bonds, including payments of the utility project charge, must first be applied to the payment of the financing costs of the bonds then due, including the funding of reserves for the bonds. Any excess revenues will be applied as determined by the authority for the benefit of the utility for which the bonds were issued.

Utility Cost Containment Bonds

The proceeds of utility cost containment bonds made available to the local agency or its publicly owned utility must be used for the utility project identified in the application for financing of the project or used to refinance indebtedness of the local agency that financed or refinanced the project. The bonds must be issued pursuant to the provisions of the bill and the procedures specified for intergovernmental utility authorities under s. 163.01(7)(g)8., F.S., and may be validated pursuant to existing procedures for such entities under s. 163.01(7)(g)9., F.S.

The authority must pledge all utility project property as security for payment of the bonds. All rights of the authority with respect to the pledged property are for the benefit of and enforceable by the beneficiaries of the pledge as provided in the related financing documents.

If utility project property is pledged as security for the payment of utility cost containment bonds, the local agency or its publicly owned utility must enter into a contract with the authority which requires that the local agency or its utility:

- Continue to operate the utility, including the utility project that is being financed or refinanced;
- Collect the utility project charge from customers for the benefit and account of the authority and the beneficiaries of the pledge of the charge, and
- Separately account for and remit revenue from the utility project charge to, or for the account of, the authority.

The utility cost containment bonds are nonrecourse to the credit or any assets of the local agency or the publicly owned utility but are payable from, and secured by a pledge of, the utility project property relating to the bonds and any additional security or credit enhancement specified in the documents relating to the bonds. If the authority is financing the project through a single-purpose limited liability company, the bonds are payable from, and secured by, a pledge of amounts paid by the company to the authority from the applicable utility project property. This represents the exclusive method of perfecting a pledge of utility project property by the company.

The issuance of utility cost containment bonds does not obligate the state or any political subdivision of the state to levy or to pledge any form of taxation to pay the bonds or to make any appropriation for their payment. Each bond must contain on its face the following statement or a similar statement: “Neither the full faith and credit nor the taxing power of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of, or interest on, this bond.”

The authority may not rescind, alter, or amend any resolution or document that pledges utility cost charges for payment of utility cost containment bonds.

Subject to the terms of the pledge document, the validity and relative priority of a pledge is not defeated or adversely affected by the commingling of revenues generated by the utility project property with other funds of the local agency or the publicly owned utility collecting a utility project charge on behalf of an authority.

Financing costs in connection with utility cost containment bonds are a special obligation of the authority and do not constitute a liability of the state or any political subdivision of the state. Financing costs are not a pledge of the full faith and credit of the state or any political subdivision, including the authority, but are payable solely from the funds identified in the documents relating to the bonds. This does not preclude guarantees or credit enhancements in connection with the bonds.

Except as provided in the bill with respect to adjustments to a utility project charge, recovery of the financing costs for utility cost containment bonds from the utility project charge is irrevocable. Further, the authority is prohibited from: rescinding, altering, or amending the applicable financing resolution to revalue or revise the financing costs of the bonds for ratemaking purposes; determining that the financing costs for the related bonds or the utility project charge is unjust or unreasonable; or in any way reducing or impairing the value of utility project property that includes the charge. The amount of revenues arising with respect to the financing costs for the related bonds or the charge are not subject to reduction, impairment, postponement, or termination for any reason until all financing costs to be paid from the charge are fully met and discharged.

Further, except as provided in the bill with respect to adjustments to a utility project charge, the bill establishes a pledge that the state may not limit or alter the financing costs or the utility project property, including the utility project charge associated with the bonds, or any rights related to the utility project property until all financing costs with respect to the bonds are fully discharged. This provision does not preclude limitation or alteration if adequate provision is made by law to protect the owners of the bonds. The state's pledge may be included by the authority in the governing documents for the bonds.

Bankruptcy Prohibition

Notwithstanding any other law, an authority that has issued utility cost containment bonds may not become a debtor under the United States Bankruptcy Code or become the subject of any similar case or proceeding under any other state or federal law if any payment obligation from utility project property remains with respect to the bonds. Further, a governmental officer or organization may not authorize the authority to become such a debtor or become subject to such a case or proceeding in this circumstance.

Construction

The bill provides for its liberal construction to effectively carry out its intent and purposes. Further, the bill expressly grants and confers upon public entities all incidental powers necessary to carry the bill into effect.

The bill takes effect July 1, 2016.

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:

Customers may benefit from lower financing costs for local agency utility projects, if the resulting savings are passed through to customers. The bill does not require that savings be passed through to customers.

Once utility cost containment bonds are issued, a customer will be obligated to pay the charge for as long as he or she resides on property within the service territory.

C. Government Sector Impact:

The bill may reduce local government expenditures by reducing financing costs for water or wastewater utility projects for utilities owned and operated by a local agency, including any municipality, county, special district, public corporation, regional water authority, or other governmental entity sponsoring or refinancing a utility project.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an as-yet unnumbered section of the Florida Statutes.

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.

By Senator Legg

17-00042-16

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1 A bill to be entitled
2 An act relating to utility projects; providing a short
3 title; defining terms; authorizing certain local
4 governmental entities to finance the costs of a
5 utility project by issuing utility cost containment
6 bonds upon application by a local agency; specifying
7 application requirements; requiring a successor entity
8 of a local agency to assume and perform the
9 obligations of the local agency with respect to the
10 financing of a utility project; providing procedures
11 for local agencies to use when applying to finance a
12 utility project using utility cost containment bonds;
13 authorizing an authority to issue utility cost
14 containment bonds for specified purposes related to
15 utility projects; authorizing an authority to form
16 alternate entities to finance utility projects;
17 requiring the governing body of the authority to adopt
18 a financing resolution and impose a utility project
19 charge on customers of a publicly owned utility as a
20 condition of utility project financing; specifying
21 required and optional provisions of the financing
22 resolution; specifying powers of the authority;
23 requiring the local agency or its publicly owned
24 utility to assist the authority in the establishment
25 or adjustment of the utility project charge; requiring
26 that customers of the public utility specified in the
27 financing resolution pay the utility project charge;
28 providing for adjustment of the utility project
29 charge; establishing ownership of the revenues of the

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30 utility project charge; requiring the local agency or
31 its publicly owned utility to collect the utility
32 project charge; conditioning a customer's receipt of
33 public utility services on payment of the utility
34 project charge; authorizing a local agency or its
35 publicly owned utility to use available remedies to
36 enforce collection of the utility project charge;
37 providing that the pledge of the utility project
38 charge to secure payment of bonds issued to finance
39 the utility project is irrevocable and cannot be
40 reduced or impaired except under certain conditions;
41 providing that a utility project charge constitutes
42 utility project property; providing that utility
43 project property is subject to a lien to secure
44 payment of costs relating to utility cost containment
45 bonds; establishing payment priorities for the use of
46 revenues of the utility project property; providing
47 for the issuance and validation of utility cost
48 containment bonds; securing the payment of utility
49 cost containment bonds and related costs; providing
50 that utility cost containment bonds do not obligate
51 the state or any political subdivision and are not
52 backed by their full faith and credit and taxing
53 power; requiring that certain disclosures be printed
54 on utility cost containment bonds; providing that
55 financing costs related to utility cost containment
56 bonds are an obligation of the authority only;
57 providing limitations on the state's ability to alter
58 financing costs or utility project property under

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59 certain circumstances; prohibiting an authority with
60 outstanding payment obligations on utility cost
61 containment bonds from becoming a debtor under certain
62 federal or state laws; providing for construction;
63 endowing public entities with certain powers;
64 providing an effective date.

65

66 Be It Enacted by the Legislature of the State of Florida:

67

68 Section 1. Utility Cost Containment Bond Act.—

69 (1) SHORT TITLE.—This section may be cited as the “Utility
70 Cost Containment Bond Act.”

71 (2) DEFINITIONS.—As used in this section, the term:

72 (a) “Authority” means an entity created under s.
73 163.01(7)(g), Florida Statutes, which provides public utility
74 services and whose membership consists of at least three
75 counties. The term includes any successor to the powers and
76 functions of such an entity.

77 (b) “Cost,” as applied to a utility project or a portion of
78 a utility project financed under this section, means:

79 1. Any part of the expense of constructing, renovating, or
80 acquiring lands, structures, real or personal property, rights,
81 rights-of-way, franchises, easements, and interests acquired or
82 used for a utility project;

83 2. The expense of demolishing or removing any buildings or
84 structures on acquired land, including the expense of acquiring
85 any lands to which the buildings or structures may be moved, and
86 the cost of all machinery and equipment used for the demolition
87 or removal;

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- 88 3. Finance charges;
89 4. Interest, as determined by the authority;
90 5. Provisions for working capital and debt service
91 reserves;
92 6. Expenses for extensions, enlargements, additions,
93 replacements, renovations, and improvements;
94 7. Expenses for architectural, engineering, financial,
95 accounting, and legal services, plans, specifications,
96 estimates, and administration; or
97 8. Any other expenses necessary or incidental to
98 determining the feasibility of constructing a utility project or
99 incidental to the construction, acquisition, or financing of a
100 utility project.
- 101 (c) "Customer" means a person receiving water or wastewater
102 service from a publicly owned utility.
- 103 (d) "Finance" or "financing" includes refinancing.
- 104 (e) "Financing cost" means:
- 105 1. Interest and redemption premiums that are payable on
106 utility cost containment bonds;
- 107 2. The cost of retiring the principal of utility cost
108 containment bonds, whether at maturity, including acceleration
109 of maturity upon an event of default, or upon redemption,
110 including sinking fund redemption;
- 111 3. The cost related to issuing or servicing utility cost
112 containment bonds, including any payment under an interest rate
113 swap agreement and any type of fee;
- 114 4. A payment or expense associated with a bond insurance
115 policy; financial guaranty; contract, agreement, or other credit
116 or liquidity enhancement for bonds; or contract, agreement, or

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117 other financial agreement entered into in connection with
118 utility cost containment bonds;

119 5. Any coverage charges; or

120 6. The funding of one or more reserve accounts relating to
121 utility cost containment bonds.

122 (f) "Financing resolution" means a resolution adopted by
123 the governing body of an authority that provides for the
124 financing or refinancing of a utility project with utility cost
125 containment bonds and that imposes a utility project charge in
126 connection with the utility cost containment bonds in accordance
127 with subsection (4). A financing resolution may be separate from
128 a resolution authorizing the issuance of the bonds.

129 (g) "Governing body" means the body that governs a local
130 agency.

131 (h) "Local agency" means a member of the authority, or an
132 agency or subdivision of that member, which is sponsoring or
133 refinancing a utility project, or any municipality, county,
134 authority, special district, public corporation, regional water
135 authority, or other governmental entity of the state that is
136 sponsoring or refinancing a utility project.

137 (i) "Public utility services" means water or wastewater
138 services provided by a publicly owned utility. The term does not
139 include communications services, as defined in s. 202.11,
140 Florida Statutes, Internet access services, or information
141 services.

142 (j) "Publicly owned utility" means a utility providing
143 retail or wholesale water or wastewater services which is owned
144 and operated by a local agency. The term includes any successor
145 to the powers and functions of such a utility.

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146 (k) "Revenue" means income and receipts of the authority
147 related to the financing of utility projects and issuance of
148 utility cost containment bonds, including any of the following:

149 1. Bond purchase agreements;

150 2. Bonds acquired by the authority;

151 3. Installment sales agreements and other revenue-producing
152 agreements entered into by the authority;

153 4. Utility projects financed or refinanced by the
154 authority;

155 5. Grants and other sources of income;

156 6. Moneys paid by a local agency;

157 7. Interlocal agreements with a local agency, including all
158 service agreements; or

159 8. Interest or other income from any investment of money in
160 any fund or account established for the payment of principal,
161 interest, or premiums on utility cost containment bonds, or the
162 deposit of proceeds of utility cost containment bonds.

163 (l) "Utility cost containment bonds" means bonds, notes,
164 commercial paper, variable rate securities, and any other
165 evidence of indebtedness issued by an authority the proceeds of
166 which are used directly or indirectly to pay or reimburse a
167 local agency or its publicly owned utility for the costs of a
168 utility project and which are secured by a pledge of, and are
169 payable from, utility project property.

170 (m) "Utility project" means the acquisition, construction,
171 installation, retrofitting, rebuilding, or other addition to or
172 improvement of any equipment, device, structure, process,
173 facility, technology, rights, or property located within or
174 outside this state which is used in connection with the

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175 operations of a publicly owned utility.

176 (n) "Utility project charge" means a charge levied on
177 customers of a publicly owned utility to pay the financing costs
178 of utility cost containment bonds issued under subsection (4).
179 The term includes any adjustments to the utility project charge
180 made under subsection (5).

181 (o) "Utility project property" means the property right
182 created pursuant to subsection (6). The term does not include
183 any interest in a customer's real or personal property but
184 includes the right, title, and interest of an authority in any
185 of the following:

186 1. The financing resolution, the utility project charge,
187 and any adjustment to the utility project charge established in
188 accordance with subsection (5);

189 2. The financing costs of the utility cost containment
190 bonds and all revenues, and all collections, claims, payments,
191 moneys, or proceeds for, or arising from, the utility project
192 charge; or

193 3. All rights to obtain adjustments to the utility project
194 charge pursuant to subsection (5).

195 (3) UTILITY PROJECTS.—

196 (a) A local agency that owns and operates a publicly owned
197 utility may apply to an authority to finance the costs of a
198 utility project using the proceeds of utility cost containment
199 bonds. In its application to the authority, the local agency
200 shall specify the utility project to be financed by the utility
201 cost containment bonds and the maximum principal amount, the
202 maximum interest rate, and the maximum stated terms of the
203 utility cost containment bonds.

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204 (b) A local agency may not apply to an authority for the
205 financing of a utility project under this section unless the
206 governing body has determined, in a duly noticed public meeting,
207 all of the following:

208 1. The project to be financed is a utility project.

209 2. The local agency will finance costs of the utility
210 project, and the costs associated with the financing will be
211 paid from utility project property, including the utility
212 project charge for the utility cost containment bonds.

213 3. Based on the best information available to the governing
214 body, the rates charged to the local agency's retail customers
215 by the publicly owned utility, including the utility project
216 charge resulting from the financing of the utility project with
217 utility cost containment bonds, are expected to be lower than
218 the rates that would be charged if the project were financed
219 with bonds payable from revenues of the publicly owned utility.

220 (c) A determination by the governing body that a project to
221 be financed with utility cost containment bonds is a utility
222 project is final and conclusive, and the utility cost
223 containment bonds issued to finance the utility project and the
224 utility project charge are valid and enforceable as set forth in
225 the financing resolution and the documents relating to the
226 utility cost containment bonds.

227 (d) If a local agency that has outstanding utility cost
228 containment bonds ceases to operate a water or wastewater
229 utility, directly or through its publicly owned utility,
230 references in this section to the local agency or to its
231 publicly owned utility must be to the successor entity. The
232 successor entity shall assume and perform all obligations of the

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233 local agency and its publicly owned utility required by this
234 section and shall assume the servicing agreement required under
235 subsection (4) while the utility cost containment bonds remain
236 outstanding.

237 (4) FINANCING UTILITY PROJECTS.—

238 (a) An authority may issue utility cost containment bonds
239 to finance or refinance utility projects; refinance debt of a
240 local agency incurred in financing or refinancing utility
241 projects, provided such refinancing results in present value
242 savings to the local agency; or, with the approval of the local
243 agency, refinance previously issued utility cost containment
244 bonds.

245 1. To finance a utility project, the authority may:

246 a. Form a single-purpose limited liability company and
247 authorize the company to adopt the financing resolution of such
248 utility project; or

249 b. Create a new single-purpose entity by interlocal
250 agreement under s. 163.01, Florida Statutes, the membership of
251 which shall consist of the authority and two or more of its
252 members or other public agencies.

253 2. A single-purpose limited liability company or a single-
254 purpose entity may be created by the authority solely for the
255 purpose of performing the duties and responsibilities of the
256 authority specified in this section and constitutes an authority
257 for all purposes of this section. Reference to the authority
258 includes a company or entity created under this paragraph.

259 (b) The governing body of an authority that is financing
260 the costs of a utility project shall adopt a financing
261 resolution and shall impose a utility project charge as

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262 described in subsection (5). All provisions of a financing
263 resolution adopted pursuant to this section are binding on the
264 authority.

265 1. The financing resolution must:

266 a. Provide a brief description of the financial calculation
267 method the authority will use in determining the utility project
268 charge. The calculation method must include a periodic
269 adjustment methodology to be applied at least annually to the
270 utility project charge. The authority shall establish the
271 allocation of the utility project charge among classes of
272 customers of the publicly owned utility. The decision of the
273 authority is final and conclusive, and the method of calculating
274 the utility project charge and the periodic adjustment may not
275 be changed;

276 b. Require each customer in the class or classes of
277 customers specified in the financing resolution who receives
278 water or wastewater service through the publicly owned utility
279 to pay the utility project charge regardless of whether the
280 customer has an agreement to receive water or wastewater service
281 from a person other than the publicly owned utility;

282 c. Require that the utility project charge be charged
283 separately from other charges on the bill of customers of the
284 publicly owned utility in the class or classes of customers
285 specified in the financing resolution; and

286 d. Require that the authority enter into a servicing
287 agreement with the local agency or its publicly owned utility to
288 collect the utility project charge.

289 2. The authority may require in the financing resolution
290 that, in the event of a default by the local agency or its

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291 publicly owned utility with respect to revenues from the utility
292 project property, the authority, upon application by the
293 beneficiaries of the statutory lien as set forth in subsection
294 (6), shall order the sequestration and payment to the
295 beneficiaries of revenues arising from utility project property.
296 This subparagraph does not limit any other remedies available to
297 the beneficiaries by reason of default.

298 (c) An authority has all the powers provided in this
299 section and s. 163.01(7)(g), Florida Statutes.

300 (d) Each authority shall work with local agencies that
301 request assistance to determine the most cost-effective manner
302 of financing regional water projects. If the entities determine
303 that the issuance of utility cost containment bonds will result
304 in lower financing costs for a project, the authority shall
305 cooperate with such local agencies and, if requested by the
306 local agencies, issue utility cost containment bonds as provided
307 in this section.

308 (5) UTILITY PROJECT CHARGE.-

309 (a) The authority shall impose a sufficient utility project
310 charge, based on estimates of water or wastewater service usage,
311 to ensure timely payment of all financing costs with respect to
312 utility cost containment bonds. The local agency or its publicly
313 owned utility shall provide the authority with information
314 concerning the publicly owned utility which may be required by
315 the authority in establishing the utility project charge.

316 (b) The utility project charge is a nonbypassable charge to
317 all present and future customers of the publicly owned utility
318 in the class or classes of customers specified in the financing
319 resolution upon its adoption. If the regulatory structure for

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320 the water or wastewater industry changes in a manner that
321 authorizes a customer to choose to take service from an
322 alternative supplier and the customer chooses an alternative
323 supplier, the customer remains liable for paying the utility
324 project charge if the customer continues to receive any service
325 from the publicly owned utility for the transmission,
326 distribution, processing, delivery, or metering of the
327 underlying water or wastewater service.

328 (c) The authority shall determine at least annually and at
329 such additional intervals as provided in the financing
330 resolution and documents related to the applicable utility cost
331 containment bonds whether adjustments to the utility project
332 charge are required. The authority shall use the adjustment to
333 correct for any overcollection or undercollection of financing
334 costs from the utility project charge or to make any other
335 adjustment necessary to ensure the timely payment of the
336 financing costs of the utility cost containment bonds, including
337 adjustment of the utility project charge to pay any debt service
338 coverage requirement for the utility cost containment bonds. The
339 local agency or its publicly owned utility shall provide the
340 authority with information concerning the publicly owned utility
341 which may be required by the authority in adjusting the utility
342 project charge.

343 1. If the authority determines that an adjustment to the
344 utility project charge is required, the adjustment must be made
345 using the methodology specified in the financing resolution.

346 2. The adjustment may not impose the utility project charge
347 on a class of customers which was not subject to the utility
348 project charge pursuant to the financing resolution imposing the

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349 utility project charge.

350 (d) Revenues from a utility project charge are special
351 revenues of the authority and do not constitute revenue of the
352 local agency or its publicly owned utility for any purpose,
353 including any dedication, commitment, or pledge of revenue,
354 receipts, or other income that the local agency or its publicly
355 owned utility has made or will make for the security of any of
356 its obligations.

357 (e) The local agency or its publicly owned utility shall
358 act as a servicing agent for collecting the utility project
359 charge throughout the duration of the servicing agreement
360 required by the financing resolution. The local agency or its
361 publicly owned utility shall hold the money collected in trust
362 for the exclusive benefit of the persons entitled to have the
363 financing costs paid from the utility project charge, and the
364 money does not lose its designation as revenues of the authority
365 by virtue of possession by the local agency or its publicly
366 owned utility.

367 (f) The customer must make timely and complete payment of
368 all utility project charges as a condition of receiving water or
369 wastewater service from the publicly owned utility. The local
370 agency or its publicly owned utility may use its established
371 collection policies and remedies provided under law to enforce
372 collection of the utility project charge. A customer liable for
373 a utility project charge may not withhold payment, in whole or
374 in part, thereof.

375 (g) The pledge of a utility project charge to secure
376 payment of utility cost containment bonds is irrevocable, and
377 the state, or any other entity, may not reduce, impair, or

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378 otherwise adjust the utility project charge, except that the
379 authority shall implement the periodic adjustments to the
380 utility project charge as provided under this subsection.

381 (6) UTILITY PROJECT PROPERTY.—

382 (a) A utility project charge constitutes utility project
383 property on the effective date of the financing resolution
384 authorizing such utility project charge. Utility project
385 property constitutes property, including contracts for securing
386 utility cost containment bonds, regardless of whether the
387 revenues and proceeds arising with respect to the utility
388 project property have accrued. Utility project property shall
389 continuously exist as property for all purposes with all of the
390 rights and privileges of this section through the end of the
391 period provided in the financing resolution or until all
392 financing costs with respect to the related utility cost
393 containment bonds are paid in full, whichever occurs first.

394 (b) Upon the effective date of the financing resolution,
395 the utility project property is subject to a first-priority
396 statutory lien to secure the payment of the utility cost
397 containment bonds.

398 1. The lien secures the payment of all financing costs then
399 existing or subsequently arising to the holders of the utility
400 cost containment bonds, the trustees or representatives of the
401 holders of the utility cost containment bonds, and any other
402 entity specified in the financing resolution or the documents
403 relating to the utility cost containment bonds.

404 2. The lien attaches to the utility project property
405 regardless of the current ownership of the utility project
406 property, including any local agency or its publicly owned

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407 utility, the authority, or any other person.

408 3. Upon the effective date of the financing resolution, the
409 lien is valid and enforceable against the owner of the utility
410 project property and all third parties, and additional public
411 notice is not required.

412 4. The lien is a continuously perfected lien on all
413 revenues and proceeds generated from the utility project
414 property regardless of whether the revenues or proceeds have
415 accrued.

416 (c) All revenues with respect to utility project property
417 related to utility cost containment bonds, including payments of
418 the utility project charge, shall be applied first to the
419 payment of the financing costs of the utility cost containment
420 bonds then due, including the funding of reserves for the
421 utility cost containment bonds. Any excess revenues shall be
422 applied as determined by the authority for the benefit of the
423 utility for which the utility cost containment bonds were
424 issued.

425 (7) UTILITY COST CONTAINMENT BONDS.—

426 (a) Utility cost containment bonds shall be issued within
427 the parameters of the financing provided by the authority
428 pursuant to this section. The proceeds of the utility cost
429 containment bonds made available to the local agency or its
430 publicly owned utility shall be used for the utility project
431 identified in the application for financing of the utility
432 project or used to refinance indebtedness of the local agency
433 which financed or refinanced utility projects.

434 (b) Utility cost containment bonds shall be issued as set
435 forth in this section and s. 163.01(7)(g)8., Florida Statutes,

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436 and may be validated pursuant to s. 163.01(7)(g)9., Florida
437 Statutes.

438 (c) The authority shall pledge the utility project property
439 as security for the payment of the utility cost containment
440 bonds. All rights of an authority with respect to utility
441 project property pledged as security for the payment of utility
442 cost containment bonds shall be for the benefit of, and
443 enforceable by, the beneficiaries of the pledge to the extent
444 provided in the financing documents relating to the utility cost
445 containment bonds.

446 1. If utility project property is pledged as security for
447 the payment of utility cost containment bonds, the local agency
448 or its publicly owned utility shall enter into a contract with
449 the authority which requires, at a minimum, that the publicly
450 owned utility:

451 a. Continue to operate its publicly owned utility,
452 including the utility project that is being financed or
453 refinanced;

454 b. Collect the utility project charge from customers for
455 the benefit and account of the authority and the beneficiaries
456 of the pledge of the utility project charge; and

457 c. Separately account for and remit revenue from the
458 utility project charge to, or for the account of, the authority.

459 2. The pledge of a utility project charge to secure payment
460 of utility cost containment bonds is irrevocable, and the state
461 or any other entity may not reduce, impair, or otherwise adjust
462 the utility project charge, except that the authority shall
463 implement periodic adjustments to the utility project charge as
464 provided under subsection (5).

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465 (d) Utility cost containment bonds shall be nonrecourse to
466 the credit or any assets of the local agency or the publicly
467 owned utility but are payable from, and secured by a pledge of
468 the utility project property relating to the utility cost
469 containment bonds and any additional security or credit
470 enhancement specified in the documents relating to the utility
471 cost containment bonds. If, pursuant to subsection (4), the
472 authority is financing the project through a single-purpose
473 limited liability company, the utility cost containment bonds
474 shall be payable from, and secured by, a pledge of amounts paid
475 by the company to the authority from the applicable utility
476 project property. This paragraph is the exclusive method of
477 perfecting a pledge of utility project property by the company
478 securing the payment of financing costs under any agreement of
479 the company in connection with the issuance of utility cost
480 containment bonds.

481 (e) The issuance of utility cost containment bonds does not
482 obligate the state or any political subdivision thereof to levy
483 or to pledge any form of taxation to pay the utility cost
484 containment bonds or to make any appropriation for their
485 payment. Each utility cost containment bond must contain on its
486 face a statement in substantially the following form:

487
488 "Neither the full faith and credit nor the taxing power of the
489 State of Florida or any political subdivision thereof is pledged
490 to the payment of the principal of, or interest on, this bond."

491
492 (f) Notwithstanding any other law or this section, a
493 financing resolution or other resolution of the authority, or

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494 documents relating to utility cost containment bonds, the
495 authority may not rescind, alter, or amend any resolution or
496 document that pledges utility cost charges for payment of
497 utility cost containment bonds.

498 (g) Subject to the terms of any pledge document created
499 under this section, the validity and relative priority of a
500 pledge is not defeated or adversely affected by the commingling
501 of revenues generated by the utility project property with other
502 funds of the local agency or the publicly owned utility
503 collecting a utility project charge on behalf of an authority.

504 (h) Financing costs in connection with utility cost
505 containment bonds are a special obligation of the authority and
506 do not constitute a liability of the state or any political
507 subdivision thereof. Financing costs are not a pledge of the
508 full faith and credit of the state or any political subdivision
509 thereof, including the authority, but are payable solely from
510 the funds identified in the documents relating to the utility
511 cost containment bonds. This paragraph does not preclude
512 guarantees or credit enhancements in connection with utility
513 cost containment bonds.

514 (i) Except as otherwise provided in this section with
515 respect to adjustments to a utility project charge, the recovery
516 of the financing costs for the utility cost containment bonds
517 from the utility project charge is irrevocable, and the
518 authority does not have the power, by rescinding, altering, or
519 amending the applicable financing resolution, to revalue or
520 revise for ratemaking purposes the financing costs of utility
521 cost containment bonds; to determine that the financing costs
522 for the related utility cost containment bonds or the utility

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523 project charge is unjust or unreasonable; or to in any way,
524 either directly or indirectly, reduce or impair the value of
525 utility project property that includes the utility project
526 charge. The amount of revenues arising with respect to the
527 financing costs for the related utility cost containment bonds
528 or the utility project charge is not subject to reduction,
529 impairment, postponement, or termination for any reason until
530 all financing costs to be paid from the utility project charge
531 are fully met and discharged.

532 (j) Except as provided in subsection (5) with respect to
533 adjustments to a utility project charge, the state pledges and
534 agrees with the owners of utility cost containment bonds that
535 the state may not limit or alter the financing costs or the
536 utility project property, including the utility project charge,
537 relating to the utility cost containment bonds, or any rights
538 related to the utility project property, until all financing
539 costs with respect to the utility cost containment bonds are
540 fully met and discharged. This paragraph does not preclude
541 limitation or alteration if adequate provision is made by law to
542 protect the owners. The authority may include the state's pledge
543 in the governing documents for utility cost containment bonds.

544 (8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other
545 law, an authority that issued utility cost containment bonds may
546 not, and a governmental officer or organization may not
547 authorize the authority to, become a debtor under the United
548 States Bankruptcy Code or become the subject of any similar case
549 or proceeding under any other state or federal law if any
550 payment obligation from utility project property remains with
551 respect to the utility cost containment bonds.

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552 (9) CONSTRUCTION.—This section and all grants of power and
553 authority in this section shall be liberally construed to
554 effectuate their purposes. All incidental powers necessary to
555 carry this section into effect are expressly granted to, and
556 conferred upon, public entities.

557 Section 2. This act shall take effect July 1, 2016.

SUMMARY OF AMENDMENTS
TO
SB 534

<p>Amendment # 1 By Senator Hays Barcode 146416 delete lines 78 - 313</p>	<p>The amendment does the following:</p> <ul style="list-style-type: none">• Adds language to clarify that investor-owned water or wastewater utilities holding a certificate of authorization under the jurisdiction of the commission are exempt from the sales and use tax. This change was suggested by DOR.• Revises the new provision relating to exemptions to conform terms: the exemption applies to water service.• Authorizing the commission on its own motion or upon the request of a utility to require a utility to create a utility reserve fund for infrastructure repair or replacement.• Removes the cap of 50 percent on the amount of reasonable rate case expense that can be recovered by a utility. Instead, the commission is given criteria it must evaluate in determining reasonable rate case expense and disallow rate case expense it does not find reasonable. The commission may adopt additional criteria by rule. In addition, the commission must make its findings for each criteria based upon competent, substantial evidence. Finally, the commission may allocate accordingly the benefits of the rate case expense between the customers and the shareholders, owners, or affiliates.• Requires a county that regulates water or wastewater services to comply with the requirements for abandoned water and wastewater systems.• Removes s. 367.171 from the bill as the changes are made now in s. 367.165.
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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: CS/CS/SB 534

INTRODUCER: Communications, Energy, and Public Utilities Committee; Environmental Preservation and Conservation Committee and Senator Hays

SUBJECT: Water and Wastewater

DATE: January 12, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hinton</u>	<u>Rogers</u>	<u>EP</u>	<u>Fav/CS</u>
2.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 534:

- Directs the Division of Bond Finance to review the allocation of private activity bonds in Florida with respect to water and wastewater projects.
- Provides a sales tax exemption for sales or leases to a water or wastewater investor-owned utility (IOU) that hold a certificate of authorization, if the goods or services are used in the state.
- Creates an exemption from PSC regulation for persons who resell water service to individually-metered residents at a price that does not exceed the purchase price of water service plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of the water service.
- Requires the PSC, upon an IOU's request in a rate case, to create a reserve fund for the IOU to be used for certain infrastructure repair and replacement projects, with disbursement subject to PSC approval.
- Identifies specific types of expenses eligible for "pass-through" treatment in IOU rates and authorizes the PSC, by rule, to identify additional types of expenses eligible for such treatment, provided the expenses are beyond the utility's control.
- Prohibits the recovery of an IOU's rate case expense:
 - o For more than one rate case at any given time; and
 - o Where the rate case expense is incurred to prepare or file a staff-assisted rate case in which no party intervenes.

- Provides criteria the commission must use in determining reasonable rate case expense and authorizes the commission to adopt additional criteria by rule. Requires the commission to make findings for each criteria based upon competent substantial evidence and allocate the benefits between the customers and the shareholders, owners, or affiliates.
- Authorizes the PSC, on its own motion or based on customer complaints, to review water quality issues involving secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) and wastewater service issues involving odor, noise, aerosol drift, or lighting.
- Expands the availability of low-interest loans through the State Revolving Fund to all for-profit water utilities.
- Requires a county that regulates water or wastewater services to comply with the requirements for abandoned water and wastewater systems.

II. Present Situation:

Water and Wastewater Industry Overview

In various areas throughout Florida, water and wastewater services are provided through privately-owned and operated water and wastewater companies. These privately-owned companies are referred to as “investor-owned utilities,” or “IOUs.” IOUs can range in size from very small systems, owned by individuals as sole proprietorships and serving only a few dozen customers in a small neighborhood, to systems owned by large interstate corporations which serve tens of thousands of customers in multiple Florida counties.

For IOUs operating within a single Florida county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.¹ Counties that opt to regulate water and wastewater utilities are required to regulate the rates pursuant to s. 367.081(1), (2), (3), and (6), F.S. That section requires that the county approve rates; that the rates are just, reasonable, compensatory, and not unfairly discriminatory; that reasonable costs may be used in determining the revenue requirement; and that the county may withhold consent to the operation of any rate request under certain conditions. Regardless of whether the county has opted to regulate IOUs, the PSC has jurisdiction over all water and wastewater utility systems whose service transverse county boundaries, except for systems owned and regulated by intergovernmental authorities.² Currently, the PSC has jurisdiction over 146 water and wastewater IOUs in 37 of 67 counties in Florida.³ The remaining water and wastewater customers in the state are served either by IOUs in non-jurisdictional counties, by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits), by wells and septic tanks, or by systems owned, operated, managed, or controlled by governmental authorities.⁴

¹ s. 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this election only after 10 continuous years of PSC regulation.

² *Id.*

³ *Facts and Figures of the Florida Utility Industry*, Florida Public Service Commission, March 2015, available at <http://www.psc.state.fl.us/publications/reports.aspx>.

⁴ s. 367.022(2), F.S.

For regulatory purposes, the PSC classifies a water or wastewater IOU into one of three categories based on annual operating revenues:⁵

Class A – Operating revenues of \$1,000,000 or more.

Class B – Operating revenues of \$200,000 or more but less than \$1,000,000.

Class C – Operating revenues less than \$200,000.

Currently, there are 13 Class A utilities, 37 Class B utilities, and 96 Class C utilities under the PSC's jurisdiction.

Study Committee on Investor-Owned Water and Wastewater Utility Systems

Chapter 2012-187, Laws of Florida, created the Study Committee on Investor-Owned Water and Wastewater Utility Systems (Study Committee)⁶ to “identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers” and to research possible solutions.⁷ Specifically, the Study Committee was required to consider:

- The ability of a small IOU to achieve economies of scale when purchasing equipment, commodities, or services;
- The availability of low interest loans to a small, privately owned water or wastewater utility;
- Any tax incentives or exemptions, temporary or permanent, which are available to a small water or wastewater utility;
- The impact on customer rates if a utility purchases an existing water or wastewater utility system;
- The impact on customer rates of a utility providing service through the use of a reseller; and
- Other issues that the Study Committee identifies during its investigation.⁸

The Study Committee conducted 12 public meetings at which it heard public comment on these issues, identified additional issues for consideration and research (and heard public comment on the additional issues), and discussed and debated solutions to the issues.⁹ Consistent with the law, the Study Committee submitted a report containing its recommendations to the President of the Senate, the Speaker of the House, and the Governor, on February 15, 2013.

⁵ Rules 25-30.110(4) and 25-30.115, F.A.C. As noted in these rules, this classification system is used by the National Association of Regulatory Utility Commissioners for publishing its system of accounts.

⁶ As required by the law, the Study Committee was comprised of 18 members, including three non-voting members and 15 voting members. The three non-voting members included Commissioner Julie I. Brown (representing the PSC as the Study Committee Chair), a representative of the Florida Department of Environmental Protection, and the Public Counsel. The 15 voting members included State Senator Alan Hays (appointed by the President of the Senate), State Representative Ray Pilon (appointed by the Speaker of the House), and representatives of the following entities or groups, as appointed by the Governor: a county commission that regulates investor-owned water/wastewater utilities; a governmental authority created under ch. 163, F.S.; a water management district; a county health department; two Class A utilities; a Class B utility; a Class C utility; a utility owned or operated by a municipal or county government; customers of a Class A utility; customers of a Class B or C utility; the Florida Section of the American Water Works Association; and the Florida Rural Water Association.

⁷ s. 2, Ch. 2012-187, Laws of Fla.

⁸ *Id.*

⁹ See Sections II and III, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, February 15, 2013 (*Study Committee Report*), available at <http://www.psc.state.fl.us/utilities/waterwastewater/>.

The Study Committee's report included recommendations for legislative action, agency rulemaking, and other agency action. Based on the issues that it was required to consider, the Study Committee recommended legislative action to do the following:

- Increase the availability of low-interest loans to small, privately owned water and wastewater utilities by:
 - Expanding availability of low-interest loans through the Drinking Water State Revolving Fund (DWSRF) to all for-profit water utilities;
 - Allowing IOUs to apply “pass-through” treatment for loan service fees or loan origination fees for eligible projects as identified by the PSC; and
 - Directing the Division of Bond Finance to review the allocation of private activity bonds in Florida with respect to water and wastewater projects.
- Provide a sales tax exemption for sales or leases to an IOU owned or operated by a Florida corporation.
- Create an exemption from PSC regulation for persons who resell service to individually-metered end-users at a price that does not exceed the actual purchase price of water plus actual costs of meter reading and billing not to exceed 9%.

Based on additional issues that it identified and considered, the Study Committee recommended legislative action to do the following:

- Authorize the PSC, during a rate case, to create individual utility reserve funds to be used for projects identified in an IOU's capital improvement plan, with disbursement subject to approval by the PSC, as a means of reducing borrowing costs and making funds more readily available.
- Identify specific types of expenses eligible for “pass-through” treatment in utility rates and authorize the PSC to adopt rules identifying such expenses, provided the expenses are beyond the utility's control, to help minimize the need for costly rate case proceedings.
- Reduce the impact of rate case expense on customer rates by prohibiting the recovery of rate case expense in certain circumstances.
- Provide a mechanism for the resolution of issues involving secondary water standards (e.g., odor, taste, corrosiveness, etc.) and wastewater operational requirements.

Private Activity Bonds

Qualified private activity bonds are tax-exempt bonds issued by a state or local government, the proceeds of which are used for a defined, qualified purpose by an entity other than the government issuing the bonds. For a private activity bond to be tax-exempt, 95 percent or more of the net bond proceeds must be used for one of the qualified purposes listed in sections 142-145, and 1394 of the Internal Revenue Code, which includes facilities used to furnish water or sewer services.¹⁰ The Internal Revenue Code limits an issuing authority, such as a state, to a maximum amount of tax-exempt bonds that can be issued to finance a particular qualified purpose during a calendar year. Facilities used to furnish water or sewer services are subject to a limit on the amount of tax-exempt bonds that can be issued in a calendar year.¹¹

¹⁰ IRS, *Tax-Exempt Private Activity Bonds, Compliance Guide, Publication 4708*, 2 (Sept. 2005), available at <http://www.irs.gov/pub/irs-pdf/p4078.pdf> (last visited Nov. 10, 2015).

¹¹ *Id.* at 3.

Private activity bonds are administered in Florida by the Division of Bond Finance of the State Board of Administration (division) pursuant to ss. 159.801-159.816, F.S. Each year, the division determines the amount of private activity bonds that can be issued in Florida under the Internal Revenue Code. This amount is allocated yearly on January 1 as follows:

- An initial amount is allocated to manufacturing facility projects;
- Fifty percent of the amount remaining after the initial allocation is allocated to individual counties and groups of counties identified in s. 159.804(2)(b), F.S., on a per capita basis for any permitted purpose, which may include water and sewer projects;
- Twenty-five percent of the amount remaining after the initial allocation is allocated to the Florida Housing Finance Corporation for use in connection with the issuance of housing bonds;
- Five percent of the amount remaining after the initial allocation is allocated to the state allocation pool and applied to priority projects, which may include water and sewer projects; and
- Twenty percent of the amount remaining after the initial allocation is allocated to the Florida First Business allocation pool for projects certified by the Department of Economic Opportunity.¹²

The study committee was unable to determine the amount of private activity bonds that are allocated to water and wastewater projects, or how the private activity bonds can be fairly distributed.¹³

Sales Tax and Use Tax

Florida's sales and use tax is a 6 percent levy on retail sales of a wide array of tangible personal property, admissions, transient lodgings, commercial real estate rentals, and motor vehicles, unless explicitly exempted. In addition, Florida authorizes several local option sales taxes that are levied at the county level on transactions that are subject to the state sales tax. Generally, the sales tax is added to the price of a taxable good and collected from the purchaser at the time of sale. Sales tax represents the majority of Florida's general revenue stream (75.7 percent for the 2014-2015 fiscal year)¹⁴ and is administered by the Department of Revenue (DOR) under chapter 212, F.S.

Resellers of Water Service

As noted above, the PSC currently has jurisdiction to regulate the rates and service of water and wastewater utilities in 37 of 67 counties in Florida. For purposes of the PSC's jurisdiction, "utility" is defined as every person owning, operating, managing, or controlling a system, who is providing water or wastewater service to the public for compensation.¹⁵ However, certain entities

¹² Section 159.804, F.S.

¹³ Florida Public Service Commission, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, 43 (Feb. 2013), available at <http://www.floridapsc.com/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last visited Nov. 10, 2015).

¹⁴ Florida Revenue Estimating Conference, *2015 Florida Tax Handbook*, 16 (2015), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2015.pdf> (last visited Nov. 12, 2015).

¹⁵ s. 367.021(12), F.S.

that meet this definition are exempt from PSC regulation as utilities.¹⁶ Included among these exemptions are persons who resell water or wastewater service at a rate or charge which does not exceed the actual purchase price of the water or wastewater service.¹⁷ If the reseller includes any additional costs in the rate or charge to the retail customer, the reseller is considered a utility subject to PSC regulation.

Reseller utilities that are regulated by the PSC generally have significant investment in distribution and collection lines and other utility equipment. Examples include mobile home parks and subdivisions. In a rate proceeding, the PSC determines the utility's investment and expenses related to the facilities it owns and operates, then it sets rates accordingly. The cost of the water or wastewater service purchased from a wholesale provider, which is often a significant portion of the customers' bills, is allowed to be passed through to the customers pursuant to s. 367.081(4)(b), F.S. Resellers that choose not to pass along costs beyond their cost to purchase water or wastewater service (and therefore remain exempt from PSC regulation) generally have very little investment in equipment or lines needed to provide the service. Examples include apartment complexes, condominium buildings and small master-metered shopping centers.¹⁸

In its report, the Study Committee noted that a metered charge for water sends an appropriate price signal to end users and is a means of discouraging indiscriminate use of this resource. However, if a reseller wishes to install sub-meters for its users and bill those users for their actual water use, it will be unable recover those metering and billing costs from its customers without becoming regulated and incurring the costs of regulation.¹⁹

Reserve Funds for Water and Wastewater Utilities

The Study Committee considered the availability of low interest loans to small IOUs. In its report, the Study Committee noted the following:

Affordable, accessible financing is an ongoing issue for the water and wastewater industry and is a particularly acute need for smaller systems. Smaller utilities ... have difficulty securing low-cost, long-term financing because the characteristics and track record of the industry make smaller systems more risky in the view of lending institutions. Timing is also an issue, particularly when critical system failures occur and small utilities do not have the cash reserves to address such needs short-term. In addition, regulatory policy frequently does not provide sufficient cash flow to fully service the debt over the term of the loan. The establishment of individual utility reserve funding and/or establishment of a broader statewide reserve fund could reduce borrowing costs and make funding more readily available.²⁰

Section 367.081, F.S., establishes the rate-setting procedures for water and wastewater IOUs regulated by the PSC. However, these procedures do not provide explicit statutory authority for the PSC to establish reserve funds for water and wastewater IOUs during the rate-setting process.

¹⁶ See s. 367.022, F.S.

¹⁷ s. 367.022(8), F.S.

¹⁸ *Study Committee Report*, p. 61.

¹⁹ *Id.*, pp. 61-62.

²⁰ *Id.*, p. 67.

Public Service Commission Ratemaking

Pursuant to s. 367.081, F.S., the PSC establishes rates that are just, reasonable, compensatory, and not unfairly discriminatory. The PSC must consider the value and quality of the service and the cost of providing the service, including:

- Debt interest;
- A utility's working capital requirements;
- Maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and
- A fair return on the investment of the utility in property used and useful in the public service.

In order for an IOU to increase rates, the utility must file an application for a rate increase with the PSC. This process is referred to as a rate case. The application includes schedules and reports containing the operational, financial, economic, and rate information in order for the PSC staff to evaluate the request. The utility is also required to forecast how much funding is necessary to cover expenses for the next year and the potential return on investment from assets used to provide services. Utilities are limited to adjusting their rates twice during any 12-month period.

In setting rates, the PSC staff reviews the utility's records, conducts site inspections, and evaluates the value and quality of service based on customer input at a rate case hearing or in writing. Following the rate case hearing, the PSC issues a written order with the commissioners' decision on the rate increase. The utility is required to notify the customers of the revised rates.

Pass-Through Costs

Outside of a rate case, PSC-regulated water and wastewater IOUs are entitled to "pass through" specific types of expenses without the requirement of a PSC hearing.²¹ This mechanism provides quick rate relief to a utility when it experiences an increase in one of these types of costs and may help defer the need for a full rate case. Currently, the types of expenses eligible for pass-through treatment are limited by statute to the following:²²

- Purchased water or wastewater service.
- Electric power.
- Ad valorem taxes.
- Regulatory Assessment Fees.
- DEP fees for the National Pollutant Discharge Elimination System Program.
- Water quality or wastewater quality testing required by DEP.

Prior to changing rates using this mechanism, the IOU must file, under oath, an affirmation as to the accuracy of the figures and calculations upon which the change in rates is based and a statement that the change will not cause the utility to exceed the rate of return on equity last approved by the PSC.²³

²¹ s. 367.081(4)(b), F.S.

²² *Id.*

²³ s. 367.081(4)(c), F.S.

Recovery of Rate Case Expense

In a rate case conducted by the PSC, a water or wastewater IOU is entitled to recover its reasonable expenses incurred in preparing and proceeding with the rate case.²⁴ These expenses (referred to as “rate case expense”) typically include legal, engineering, and accounting expenses and are reviewed by the PSC as part of the rate case. Any rate case expense deemed unreasonable by the PSC may not be recovered by the IOU through its rates.²⁵ The amount of rate case expense deemed reasonable is apportioned for recovery through the IOU’s rates over a period of 4 years. At the end of this 4-year period, the IOU’s rates are reduced to remove the impact of the rate case expense.²⁶ According to the Study Committee, the impact of rate case expense on customer bills varies from case to case and is often negligible.²⁷ However, one analysis presented to the Study Committee noted three cases between 2006 and 2011 in which the annual rate impact attributed to rate case expense (over the 4-year recovery period) exceeded the annual revenue increase approved in the rate case, excluding rate case expense. In addition, this analysis noted six additional cases over the same period in which the annual rate impact attributed to rate case expense equaled more than 25 percent of the annual revenue increase approved in the rate case, excluding rate case expense.²⁸

There is no legal limit on the frequency of rate cases. In some instances, an IOU may file for approval to change its rates less than 4 years after its previous rate case. In these cases, the IOUs rates may, for a certain period of time, include rate case expense for more than one rate case, provided that the PSC has determined that there is a reasonable level of rate case expense to be recovered.

A water or wastewater IOU with gross annual revenues under \$275,000 is permitted by law to request and obtain assistance from the PSC staff in preparing the IOU’s rate case.²⁹ These rate cases are referred to as staff-assisted rate cases (SARCs). In these cases, the PSC staff reviews the IOUs books and records, inspects the IOU’s premises, prepares a quality of service analysis, and presents recommended rates and charges to the PSC for consideration. In requesting staff assistance, the IOU agrees to accept the final rates and charges approved by the PSC unless these rates and charges produce less revenue than the existing rates and charges.³⁰ An IOU that uses the SARC process may still seek assistance from other professionals in preparing and proceeding with its case and may submit the associated expenses for recovery as rate case expense.³¹ One analysis presented to the Study Committee showed an average rate case expense of \$4,563 for 23 SARCs conducted between 2007 and 2011 in which some level of rate case expense was approved.³² The average drops to \$3,025 by removing one case.³³

²⁴ s. 367.081(7), F.S.

²⁵ *Id.*

²⁶ s. 367.0816, F.S.

²⁷ *Study Committee Report*, p. 83.

²⁸ *Study Committee Report*, p. 88.

²⁹ s. 367.0814, F.S.

³⁰ *Id.* However, a person other than the utility may protest or appeal the PSC’s order approving the rates and charges.

³¹ *Study Committee Report*, pp. 84-91.

³² *Study Committee Report*, p. 87.

³³ *Id.* Information provided by the PSC indicated that there were approximately 48 SARCs conducted during this time frame, thus the average rate case expense for all SARCs is likely to be lower than this amount.

Secondary Water Standards and Quality of Service

The DEP has the primary authority to implement and enforce federal and state drinking water and wastewater standards. The focus of the DEP's permitting, monitoring, and enforcement of water and wastewater systems is to ensure compliance with primary drinking water standards and wastewater operational requirements to protect the health and safety of the public and the environment.³⁴

The DEP has adopted secondary drinking water standards for aluminum, chloride, copper, fluoride, iron, manganese, silver, sulfate, zinc, color, odor, pH, total dissolved solids, and foaming agents.³⁵ Testing for the secondary standards is required on a regular basis, though the DEP generally requires corrective action only if users voice significant complaints or if a primary contaminant level has also been exceeded.³⁶

The DEP requires that new wastewater treatment plants and modifications to existing plants be designed to minimize odors, noise, aerosol drift, and lighting, which may have an adverse effect on neighboring residential and commercial areas.³⁷ The utilities must provide reasonable assurance that such effects will not be potentially harmful to human health or welfare or unreasonably interfere with the enjoyment of life or property.³⁸ If the existing facilities fail to function as intended and create such adverse effects, the permittee must take corrective action.³⁹ The DEP may also require corrective action if there are significant complaints or if a primary contaminant level has been exceeded.⁴⁰

The PSC considers an IOU's quality of service in rate cases by evaluating the quality of the product, the operating condition of the IOU's plant and facilities, and the IOU's efforts to address customer satisfaction.⁴¹ Sanitary surveys, outstanding citations, violations, and consent orders on file with the DEP and county health departments are also considered. In addition, the DEP and county health department officials' testimony and customer testimony concerning quality of service is considered.⁴² In most cases, the emphasis of this evaluation is on compliance with standards related to the health and safety of the public and the environment.⁴³

³⁴ See ch. 403, F.S., and Rules 62-550, 62-555, 62-602, and 62-699, F.A.C., for drinking water regulations, and Rules 62-600, 62-604, 62-610, 62-620, 62-621, and 62-640, F.A.C., for wastewater regulations.

³⁵ Rule 62-550.320, F.A.C.

³⁶ Florida Public Service Commission, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, 113 (Feb. 2013), available at <http://www.floridapsc.com/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last visited Nov. 10, 2015).

³⁷ Rule 62-600.400(2)(a), F.A.C.

³⁸ *Id.*

³⁹ Rule 62-600.410, F.A.C.

⁴⁰ Florida Public Service Commission, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, 113 (Feb. 2013), available at <http://www.floridapsc.com/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last visited Nov. 10, 2015).

⁴¹ Rule 25-30.433(1), F.A.C.

⁴² *Id.*

⁴³ Florida Public Service Commission, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, 106 (Feb. 2013), available at <http://www.floridapsc.com/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last visited Nov. 10, 2015).

Chapter 2014-68, Laws of Florida, created s. 367.072, F.S., to provide a process for customers to petition the PSC to require compliance with secondary water quality standards. If a utility fails to comply with PSC orders, the process could result in revocation of the utility's certificate of authority. The law provides petition criteria and factors the PSC must consider in its review of the petition and the action it may take to dispose of the petition. Once a petition has been filed in compliance with the section, a utility is prohibited from filing a rate case until the PSC has issued a final order.

Chapter 2014-68, Laws of Florida, also created s. 367.0812, F.S., to add secondary water quality standards to the criteria that the PSC must consider when setting rates for water service. The law authorizes the PSC to reduce the utility's return on equity up to 100 basis points (1 percent) or deny all or part of a rate increase for a utility's system or part of a system if it determines that the quality of water service is less than satisfactory for the time the system remains unsatisfactory. The law requires a utility to provide an estimate of the costs and benefits of plausible solutions for each concern that the PSC finds, meet with the customers to discuss the costs and benefits of the solution, and periodically report on the progress of implementation. The PSC may require the utility to resolve certain problems and require benchmarks and periodic progress reporting. The law authorizes the PSC to adopt rules to assess and enforce compliance with the secondary water standards and prescribe penalties for a utility's failure to adequately address each concern.

Section 367.111, F.S., requires each utility to provide service to its service area within a reasonable time. It authorizes the PSC to amend the service territory or rescind the certificate of authorization of a utility that has failed to provide service as required or it is more feasible for another utility to provide such service. The section also requires each utility to provide safe, efficient, and sufficient service as prescribed by Part VI of ch. 403, F.S., and Parts I and II of ch. 373, F.S. If the PSC determines that an IOU has failed to provide its customers with water or wastewater service that meets the standards set by the DEP or the water management districts, the PSC may reduce the IOU's return on equity until the standards are met.⁴⁴

III. Effect of Proposed Changes:

Section 1 creates s. 159.8105, F.S., to require the Division of Bond Finance of the State Board of Administration to review the allocation of private activity bonds to determine the availability of additional allocations of reallocations of private activity bonds for water and wastewater infrastructure projects.

Section 2 amends s. 212.08, F.S., relating to sales and use tax to provide a tax exemption for sales or leases to investor-owned water or wastewater utilities holding a certificate of authorization under the jurisdiction of the commission if the sole or primary function of the utility is to construct, maintain, or operate a water or wastewater system in Florida and if the goods or services purchased or leased are used in Florida.

⁴⁴ Section 367.111(2), F.S.

Section 3 amends s. 367.022, F.S., relating to exemptions from PSC regulation to provide that any person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the actual purchase price of the water service plus the actual cost of meter reading and billing, not to exceed nine percent of the actual cost of the water service, is exempt from regulation by the PSC as a utility and from the provisions of ch. 367, F.S., which concerns water and wastewater systems.

Section 4 amends s. 367.081, F.S., relating to fixing and changing rates to authorize the PSC on its own motion or upon the request of a utility to create a utility reserve fund for infrastructure repair and replacement for a utility for distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service. The fund is to be funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit.

The bill requires the PSC to adopt rules to govern the implementation, management, and use of the fund, including but not limited to:

- Expenses for which the fund may be used;
- Segregation of reserve account funds;
- Requirements for a capital improvement plan; and
- Requirements for PSC authorization before disbursements are made from the fund.

In addition, the bill adds the following items to the list of costs eligible for pass-through treatment:

- Fees charged for wastewater biosolids disposal;
- Costs incurred for any tank inspection required by the DEP or local governmental authority;
- Treatment plant operator and water distribution system operator license fees required by the DEP or local governmental authority; and
- Consumptive use or water use permit fees charged by a water management district.

The bill authorizes the PSC, by rule, to establish additional specific expense items eligible for pass-through treatment. To be eligible for such treatment, an additional expense item must be imposed by a local, state, or federal law, rule, order, or notice and must be outside the control of the utility. If the PSC uses this authority, it must review its rule at least once every 5 years to determine if each specific expense item should remain eligible for pass-through treatment or if any additional expense items should become eligible.

The bill continues the current requirement that an IOU wishing to change its rates to reflect a change in any of these costs must provide verified notice to the PSC 45 days before implementing a change in its rates. The bill provides that the new rates must reflect, on an amortized or annual basis, as appropriate, the cost or amount of change in the cost of the specified expense item. Further, the bill provides that the new rates may not reflect the costs of any specific expense item already included in the IOU's rates. The bill also continues the current prohibition on use of the pass-through mechanism for increases or decreases in a specific expense item that occurred more than 12 months before the IOU's filing.

The bill requires the commission to consider specific criteria to determine reasonable rate case expense and disallow rate case expense it does not find reasonable. The commission may adopt additional criteria by rule. In addition, the commission must make its findings for each criteria based upon competent, substantial evidence. Finally, the commission may allocate accordingly the benefits of the rate case expense between the customers and the shareholders, owners, or affiliates.

Section 5 amends s. 367.0814, F.S., relating to changing rates and charges in a staff assisted rate case to detail expenses associated with rate cases that may and may not be recovered.

The bill prohibits the PSC, where the IOU has requested a staff-assisted rate case, from approving rate case expense to cover fees for attorneys and other outside consultants who are engaged by a utility for purposes of preparing or filing the case, unless another party has intervened in the case. The bill provides two exceptions. It authorizes the recovery of rate expense for such fees if the fees are incurred to provide consulting or legal services to the utility after the initial PSC staff report is issued to customers and the utility. It also requires that the PSC allow recovery of rate case expense for such fees incurred after any protest or appeal of the PSC's decision by a party other than the IOU.

The PSC is required to adopt rules to administer this provision by December 31, 2016.

Section 6 amends s. 367.0816, F.S., relating to recovery of rate case expenses to prevent a utility from recovering the four-year amortized rate case expense for more than one rate case at any given time. The bill requires a utility, when it begins recovery of approved rate case expense associated with a new rate case, to discontinue the recovery of any uncollected rate case expense approved in a prior rate case. This provision appears intended to discourage the frequent filing of rate cases to avoid "pancaking" of rate case expense in customer rates from more than one rate case at a time. In some instances, this may discourage a utility from filing a necessary rate case, though it may also result in more careful consideration by a utility of the costs, timing, and need to file a rate case.

Section 7 amends s. 367.111, F.S., to allow the PSC, on its own motion or based on complaints of customers of a water utility subject to the PSC's jurisdiction, to review water quality as it pertains to secondary drinking water standards established by the DEP or review wastewater service as it pertains to odor, noise, aerosol drift, or lighting.

Section 8 amends s. 367.165, F.S., to require a county that regulates water or wastewater services to comply with the requirements for abandoned water and wastewater systems.

Section 9 amends s. 403.8532, F.S., to increase the number of entities that are eligible for DWSRF loans by allowing the DEP to make loans to for-profit, privately owned, or investor-owned water systems.

In order to conform to this change, the bill also deletes an existing provision relating to loans for projects for a for-profit, privately owned or investor owned water system that serves 1,500 service connections or more within a single certified or franchised area.

Section 10 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

With regard to the provisions that limit the collection of rate case expense to one case in any given four years or in staff assisted rate cases, according to the PSC “by denying or limiting reasonable rate case expense, the legislation may result in confiscatory ratemaking, or a regulatory taking, in violation of federal and state constitutional protections against taking private property for public use without just compensation.”⁴⁵ Whether these provisions prove confiscatory may depend on how the provisions are implemented.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The revenue estimating conference estimates that the total impact of the sales-tax exemption in section two of the bill for fiscal year 2016-2017 is a reduction of \$3.4 million (\$3.7 million recurring) of which a reduction of \$2.7 million (\$3.0 million recurring) is on General Revenue, and a reduction of \$700,000 (\$700,000 recurring) is on local government. The impact on state trust funds is negative but insignificant.

B. Private Sector Impact:

The water and wastewater IOUs that qualify for the sales tax exemption in s. 212.08, F.S., will realize a positive fiscal impact.

By allowing for the recovery of expenses associated with meter reading and billing, the bill may encourage resellers to use individual metering more often for their tenants. Water users can be charged more accurately for the water they consume; therefore, they may experience a positive or negative fiscal impact, depending on their water use.

⁴⁵ PSC, *Senate Bill 534 Agency Analysis* (Nov. 12, 2015) (on file with the Senate Committee on Communications, Energy, and Public Utilities).

The establishment of individual utility reserve funds may reduce borrowing costs and make funding more readily available for PSC-regulated water and wastewater IOUs to make needed improvements and repairs. In some instances, the availability of these reserve funds may allow IOUs to avoid or defer the need for a rate case, providing a cost savings to the ratepayers for this expense.

The expanded availability of pass-through treatment for new expense items may, in some instances, allows IOUs to avoid or defer the need for a rate case, providing a cost savings to the ratepayer.

The limitation of rate case expenses for staff assisted rate cases may benefit the rate payer; however, the utilities' rates may increase to ensure compliance with secondary water and wastewater standards.

If the utility has to petition for new rates within four years, it may be forced to forfeit the unamortized rate case expense, increasing costs to the utility and decreasing costs to the ratepayer.

Proving up each criteria for reasonable rate case expense may increase the utility's cost for rate case expense.

The expanded availability of low-interest financing through the DWSRF to additional water and wastewater IOUs may encourage more of these utilities to make investments in water infrastructure at a lower cost to ratepayers. Lending institutions that have the ability to evaluate the credit worthiness of the large private systems may experience an increase in revenue.

C. Government Sector Impact:

The bill appears to have an insignificant impact on state government expenditures.

The PSC has not identified an impact on agency expenditures; however, it may be required to expend resources to complete rulemaking as required by the bill. In its analysis of a similar bill filed in 2015, the Department of Revenue identified an insignificant impact on its expenditures. DEP, in its analysis of the same bill filed in 2015, estimated additional expenditures of between \$10,000 and \$100,000 to employ additional expertise needed to evaluate the credit worthiness of large, complex water systems that become eligible under the bill to seek low-interest loans through the DWSRF; however, it indicated that these costs will be covered by service fees collected in the normal course of the DWSRF program and the actual costs would depend on the number of systems that request funding.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the PSC, the bill does not address how the provision of the bill concerning the surcharge a person who resells water service to his or her tenants is allowed to charge would be enforced or what proof the water reseller may need to provide to the PSC. Additionally, the change may require the PSC to adopt rules to implement this provision. It is unclear if the bill provides specific rulemaking authority for this provision.⁴⁶

Section 5 of the bill seems to anticipate intervention by parties other than the Office of Public Counsel prior to the issuance of a proposed agency action. According to the PSC, this is inconsistent with how staff-assisted rate cases are processed.⁴⁷

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 212.08, 367.022, 367.081, 367.0814, 367.0816, 367.111, 403.8532, and 367.171.

This bill creates section 159.8105 of the Florida Statutes.

IX. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Communications, Energy, and Public Utilities on January 12, 2016:

- Adds language to clarify that investor-owned water or wastewater utilities holding a certificate of authorization under the jurisdiction of the commission are exempt from the sales and use tax.
- Revises the new provision relating to exemptions to conform terms: the exemption applies to water service.
- Authorizing the commission on its own motion or upon the request of a utility to require a utility to create a utility reserve fund for infrastructure repair or replacement.
- Removes the cap of 50 percent on the amount of reasonable rate case expense that can be recovered by a utility. Instead, the commission is given criteria it must evaluate in determining reasonable rate case expense and disallow rate case expense it does not find reasonable. The commission may adopt additional criteria by rule. In addition, the commission must make its findings for each criteria based upon competent, substantial evidence. Finally, the commission may allocate accordingly the benefits of the rate case expense between the customers and the shareholders, owners, or affiliates.
- Requires a county that regulates water or wastewater services to comply with the requirements for abandoned water and wastewater systems.

⁴⁶ PSC, *Senate Bill 776 Agency Analysis* (Mar. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

⁴⁷ *Id.*

- Removes s. 367.171, F.S., from the bill as the changes are made now in s. 367.165, F.S.

CS by Environmental Preservation and Conservation on November 18, 2015:

Removes a provision that limits a tax exemption for investor owned water and wastewater utilities to those that are owned or operated by a Florida corporation. This change allows the tax exemption to apply to investor owned water and wastewater utility, regardless of whether the utility is owned or operated by a Florida corporation.

Changes a provision that a tax exemption applies to utilities that are owned by a corporation. The amendment changes the word “corporation” to “utility.”

Changes the date the PSC must adopt certain rules from December 31, 2015 to December 31, 2016.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/12/2016	.	
	.	
	.	
	.	

The Committee on Communications, Energy, and Public Utilities
(Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 78 - 313

and insert:

(ooo) Investor-owned water and wastewater utilities.-Sales
or leases to an investor-owned water or wastewater utility
holding a certificate of authorization under s. 367.031 are
exempt from the tax imposed by this chapter if the sole or
primary function of the utility is to construct, maintain, or
operate a water or wastewater system in this state and if the



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11 goods or services purchased or leased are used in this state.

12 Section 3. Present subsections (9) through (12) of section
13 367.022, Florida Statutes, are redesignated as subsections (10)
14 through (13), respectively, and a new subsection (9) is added to
15 that section, to read:

16 367.022 Exemptions.—The following are not subject to
17 regulation by the commission as a utility nor are they subject
18 to the provisions of this chapter, except as expressly provided:

19 (9) Any person who resells water service to his or her
20 tenants or to individually metered residents for a fee that does
21 not exceed the actual purchase price of the water service plus
22 the actual cost of meter reading and billing, not to exceed 9
23 percent of the actual cost of water service.

24 Section 4. Paragraph (c) is added to subsection (2) of
25 section 367.081, Florida Statutes, and paragraph (b) of
26 subsection (4) and subsection (7) of that section are amended,
27 to read:

28 367.081 Rates; procedure for fixing and changing.—

29 (2)

30 (c) In establishing rates for a utility, upon its own
31 motion or upon the request of a utility, the commission may
32 authorize a utility to create a utility reserve fund for
33 infrastructure repair and replacement for a utility for existing
34 distribution and collection infrastructure that is nearing the
35 end of its useful life or is detrimental to water quality or
36 reliability of service, to be funded by a portion of the rates
37 charged by the utility, by a secured escrow account, or through
38 a letter of credit. The commission shall adopt rules to govern
39 the implementation, management, and use of the fund, including,



40 but not limited to, rules related to expenses for which the fund
41 may be used, segregation of reserve account funds, requirements
42 for a capital improvement plan, and requirements for commission
43 authorization before disbursements are made from the fund.

44 (4)

45 (b) ~~The approved rates of any utility which receives all or~~
46 ~~any portion of its utility service from a governmental authority~~
47 ~~or from a water or wastewater utility regulated by the~~
48 ~~commission and which redistributes that service to its utility~~
49 ~~customers shall be automatically increased or decreased without~~
50 ~~hearing, upon verified notice to the commission 45 days before~~
51 ~~prior to its implementation of the increase or decrease that the~~
52 ~~utility's costs for any specified expense item the rates charged~~
53 ~~by the governmental authority or other utility have changed. The~~
54 ~~approved rates of any utility which is subject to an increase or~~
55 ~~decrease in the rates or fees that it is charged for electric~~
56 ~~power, the amount of ad valorem taxes assessed against its used~~
57 ~~and useful property, the fees charged by the Department of~~
58 ~~Environmental Protection in connection with the National~~
59 ~~Pollutant Discharge Elimination System Program, or the~~
60 ~~regulatory assessment fees imposed upon it by the commission~~
61 ~~shall be increased or decreased by the utility, without action~~
62 ~~by the commission, upon verified notice to the commission 45~~
63 ~~days prior to its implementation of the increase or decrease~~
64 ~~that the rates charged by the supplier of the electric power or~~
65 ~~the taxes imposed by the governmental authority, or the~~
66 ~~regulatory assessment fees imposed upon it by the commission~~
67 ~~have changed. The new rates authorized shall reflect the amount~~
68 ~~of the change of the ad valorem taxes or rates imposed upon the~~



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69 ~~utility by the governmental authority, other utility, or~~
70 ~~supplier of electric power, or the regulatory assessment fees~~
71 ~~imposed upon it by the commission. The approved rates of any~~
72 ~~utility shall be automatically increased, without hearing, upon~~
73 ~~verified notice to the commission 45 days prior to~~
74 ~~implementation of the increase that costs have been incurred for~~
75 ~~water quality or wastewater quality testing required by the~~
76 ~~Department of Environmental Protection.~~

77 1. The new rates authorized shall reflect, on an amortized
78 or annual basis, as appropriate, the cost of, or the amount of
79 change in the cost of, the specified expense item, required
80 water quality or wastewater quality testing performed by
81 laboratories approved by the Department of Environmental
82 Protection for that purpose. The new rates, however, shall not
83 reflect the costs of any specified expense item any required
84 water quality or wastewater quality testing already included in
85 a utility's rates. Specified expense items that are eligible for
86 automatic increase or decrease of a utility's rates include, but
87 are not limited to:

88 a. The rates charged by a governmental authority or other
89 water or wastewater utility regulated by the commission which
90 provides utility service to the utility.

91 b. The rates or fees that the utility is charged for
92 electric power.

93 c. The amount of ad valorem taxes assessed against the
94 utility's used and useful property.

95 d. The fees charged by the Department of Environmental
96 Protection in connection with the National Pollutant Discharge
97 Elimination System Program.



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98 e. The regulatory assessment fees imposed upon the utility
99 by the commission.

100 f. Costs incurred for water quality or wastewater quality
101 testing required by the Department of Environmental Protection.

102 g. The fees charged for wastewater biosolids disposal.

103 h. Costs incurred for any tank inspection required by the
104 Department of Environmental Protection or a local governmental
105 authority.

106 i. Treatment plant operator and water distribution system
107 operator license fees required by the Department of
108 Environmental Protection or a local governmental authority.

109 j. Water or wastewater operating permit fees charged by the
110 Department of Environmental Protection or a local governmental
111 authority.

112 k. Consumptive or water use permit fees charged by a water
113 management district.

114 2. A utility may not use this procedure to increase its
115 rates as a result of an increase in a specific expense item
116 which occurred ~~water quality or wastewater quality testing or an~~
117 ~~increase in the cost of purchased water services, sewer~~
118 ~~services, or electric power or in assessed ad valorem taxes,~~
119 ~~which increase was initiated~~ more than 12 months before the
120 filing by the utility.

121 3. The commission may establish by rule additional specific
122 expense items that are outside the control of the utility and
123 have been imposed upon the utility by a federal, state, or local
124 law, rule, order, or notice. If the commission establishes such
125 a rule, the commission shall review the rule at least once every
126 5 years and determine whether each expense item should continue



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127 to be cause for an automatic increase or decrease and whether
128 additional items should be included.

129 4. ~~The provisions of~~ This subsection does ~~de~~ not prevent a
130 utility from seeking a change in rates pursuant to ~~the~~
131 ~~provisions of~~ subsection (2).

132 (7) The commission shall determine the reasonableness of
133 rate case expenses and shall disallow all rate case expenses
134 determined to be unreasonable. No rate case expense determined
135 to be unreasonable shall be paid by a consumer.

136 (a) In determining the reasonable level of rate case
137 expense, the commission shall consider the following criteria
138 and disallow a rate case expense based upon:

139 1. The extent to which a utility has utilized or failed to
140 utilize ~~the provisions of~~ paragraph (4) (a) or paragraph (4) (b).

141 2. Whether the customers have received a material benefit
142 as a result of the rate case.

143 3. The amount of time between each rate case.

144 4. The extent to which a utility has used automatic
145 increases or decreases authorized under subsection (4).

146 5. The extent to which, at the time of the initial filing,
147 the utility filed complete documentation as required by
148 commission rule, including, but not limited to, minimum filing
149 requirements.

150 6. Whether the utility's rate case filing seeks
151 preferential benefits to shareholders, owners, or nonregulated
152 affiliates.

153 7. The proportion of any rate increase approved by the
154 commission as compared to the amount initially requested by the
155 utility.



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156 8. The amount of overall rate case expense incurred and
157 requested as compared to the amount of rate increase approved by
158 the commission.

159 9. The quality of service provided by the utility; and

160 10. Such other criteria as it may establish by rule.

161 (b) The commission shall make specific findings of fact,
162 supported by competent, substantial evidence, for each criterion
163 and the extent to which each criterion benefits the customer.
164 The commission may allocate the benefits between the customers
165 and the shareholders, owners, or affiliates accordingly.

166 Section 5. Subsection (3) of section 367.0814, Florida
167 Statutes, is amended to read:

168 367.0814 Staff assistance in changing rates and charges;
169 interim rates.—

170 (3) The provisions of s. 367.081(1), (2)(a), and (3) shall
171 apply in determining the utility's rates and charges. However,
172 the commission may not award rate case expenses to recover
173 attorney fees or fees of other outside consultants who are
174 engaged for the purpose of preparing or filing the case if a
175 utility receives staff assistance in changing rates and charges
176 pursuant to this section, unless the Office of Public Counsel or
177 interested parties have intervened. The commission may award
178 rate case expenses for attorney fees or fees of other outside
179 consultants if such fees are incurred for the purpose of
180 providing consulting or legal services to the utility after the
181 initial staff report is made available to customers and the
182 utility. If there is a protest or an appeal by a party other
183 than the utility, the commission may award rate case expenses to
184 the utility for attorney fees or fees of other outside



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185 consultants for costs incurred after the protest or appeal. By
186 December 31, 2016, the commission must adopt rules to administer
187 this subsection.

188 Section 6. Section 367.0816, Florida Statutes, is amended
189 to read:

190 367.0816 Recovery of rate case expenses.—

191 (1) The amount of rate case expense determined by the
192 commission pursuant to ~~the provisions of~~ this chapter to be
193 recovered through a public utilities rate shall be apportioned
194 for recovery over a period of 4 years. At the conclusion of the
195 recovery period, the rate of the public utility shall be reduced
196 immediately by the amount of rate case expense previously
197 included in rates.

198 (2) A utility may not recover the 4-year amortized rate
199 case expense for more than one rate case at any given time. If
200 the commission approves and a utility implements a rate change
201 from a subsequent rate case pursuant to this section, any
202 unamortized rate case expense for a prior rate case must be
203 discontinued. The unamortized portion of rate case expense for a
204 prior rate case must be removed from rates before the
205 implementation of an additional amortized rate case expense for
206 the most recent rate proceeding.

207 Section 7. Subsection (3) is added to section 367.111,
208 Florida Statutes, to read:

209 367.111 Service.—

210 (3) The commission may, on its own motion or based on
211 complaints of customers of a water utility subject to its
212 jurisdiction, review water quality as it pertains to secondary
213 drinking water standards established by the Department of



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214 Environmental Protection. The commission may, on its own motion
215 or based on complaints of customers of a wastewater utility
216 subject to its jurisdiction, review wastewater service as it
217 pertains to odor, noise, aerosol drift, or lighting.

218 Section 8. Section 367.165, Florida Statutes, is amended to
219 read:

220 367.165 Abandonment.—It is the intent of the Legislature
221 that water or wastewater service to the customers of a utility
222 not be interrupted by the abandonment or placement into
223 receivership of the utility. Notwithstanding s. 367.171, this
224 section applies to each county. To that end:

225 (1) A ~~No~~ person, lessee, trustee, or receiver owning,
226 operating, managing, or controlling a utility may not ~~shall~~
227 abandon the utility without giving 60 days' notice to the county
228 or counties in which the utility is located and to the
229 commission. Anyone who violates ~~the provisions of this~~
230 subsection is guilty of a misdemeanor of the first degree,
231 punishable as provided in s. 775.082 or s. 775.083. Each day of
232 such abandonment constitutes a separate offense. In addition,
233 such act is a violation of this chapter, and the commission may
234 impose upon the utility a penalty for each such offense of not
235 more than \$5,000 or may amend, suspend, or revoke its
236 certificate of authorization; each day of such abandonment
237 without prior notice constitutes a separate offense.

238 (2) After receiving such notice, the county, or counties
239 acting jointly if more than one county is affected, shall
240 petition the circuit court of the judicial circuit in which such
241 utility is domiciled to appoint a receiver, which may be the
242 governing body of a political subdivision or any other person



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243 deemed appropriate. The receiver shall operate the utility from
244 the date of abandonment until such time as the receiver disposes
245 of the property of the utility in a manner designed to continue
246 the efficient and effective operation of utility service.

247 (3) The notification to the commission under subsection (1)
248 is sufficient cause for revocation, suspension, or amendment of
249 the certificate of authorization of the utility as of the date
250 of abandonment. The receiver operating such utility shall be
251 considered to hold a temporary authorization from the
252 commission, and the approved rates of the utility shall be
253 deemed to be the interim rates of the receiver until modified by
254 the commission.

255 Section 9. Subsection (3) of section 403.8532, Florida
256 Statutes, is amended to read:

257 403.8532 Drinking water state revolving loan fund; use;
258 rules.—

259 (3) The department may make, or request that the
260 corporation make, loans, grants, and deposits to community water
261 systems; for-profit, privately owned, or investor-owned water
262 systems; ~~nonprofit, transient, noncommunity water systems;~~ and
263 nonprofit, nontransient, noncommunity water systems to assist
264 them in planning, designing, and constructing public water
265 systems, ~~unless such public water systems are for-profit~~
266 ~~privately owned or investor-owned systems that regularly serve~~
267 ~~1,500 service connections or more within a single certified or~~
268 ~~franchised area. However, a for-profit privately owned or~~
269 ~~investor-owned public water system that regularly serves 1,500~~
270 ~~service connections or more within a single certified or~~
271 ~~franchised area may qualify for a loan only if the proposed~~



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272 ~~project will result in the consolidation of two or more public~~
273 ~~water systems.~~ The department may provide loan guarantees,
274 purchase loan insurance, and refinance local debt through the
275 issue of new loans for projects approved by the department.
276 Public water systems may borrow funds made available pursuant to
277 this section and may pledge any revenues or other adequate
278 security available to them to repay any funds borrowed.

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

282 1. At least 15 percent for qualifying small public water
283 systems.

284 2. Up to 15 percent for qualifying financially
285 disadvantaged communities.

286 (b) If an insufficient number of the projects for which
287 funds are reserved under this subsection have been submitted to
288 the department at the time the funding priority list authorized
289 under this section is adopted, the reservation of these funds no
290 longer applies. The department may award the unreserved funds as
291 otherwise provided in this section.

292
293 ===== T I T L E A M E N D M E N T =====

294 And the title is amended as follows:

295 Delete lines 15 - 41

296 and insert:

297 authorizing the commission to allow a utility to
298 create a reserve fund upon the commission's own motion
299 or upon the request of the utility; requiring the
300 commission to adopt rules to govern the



301 implementation, management, and use of the fund;
302 establishing criteria for adjusted rates; specifying
303 expense items that may be the basis for an automatic
304 increase or decrease of a utility's rates; authorizing
305 the commission to establish by rule additional
306 specified expense items; requiring the commission to
307 consider certain criteria and make findings and
308 allocations among the ratepayers, shareholders,
309 owners, or affiliates when determining reasonable rate
310 case expenses; amending s. 367.0814, F.S.; authorizing
311 the commission to award rate case expenses to recover
312 attorney fees or fees of other outside consultants in
313 certain circumstances; requiring the commission to
314 adopt rules by a certain date; amending s. 367.0816,
315 F.S.; prohibiting a utility from recovering certain
316 expenses for more than one rate case at a time;
317 amending s. 367.111, F.S.; authorizing the commission
318 to review water quality and wastewater service upon
319 its own motion or based on complaints of customers;
320 amending s. 367.165, F.S.; requiring a county that
321 regulates water or wastewater services to comply with
322 the requirements for abandoned water and wastewater
323 systems; amending s. 403.8532, F.S.; authorizing the
324 Department of Environmental Protection to require or
325 request that the Florida Water Pollution Control
326 Financing Corporation make loans, grants, and deposits
327 to for-profit, privately owned, or investor-owned
328 water systems; deleting restrictions on such
329 activities; providing an effective date.

By the Committee on Environmental Preservation and Conservation;
and Senator Hays

592-01417-16

2016534c1

1 A bill to be entitled
2 An act relating to water and wastewater; creating s.
3 159.8105, F.S.; requiring the Division of Bond Finance
4 of the State Board of Administration to review the
5 allocation of private activity bonds to determine the
6 availability of additional allocation and reallocation
7 of bonds for water and wastewater infrastructure
8 projects; amending s. 212.08, F.S.; extending
9 specified tax exemptions to certain investor-owned
10 water and wastewater utilities; amending s. 367.022,
11 F.S.; exempting from regulation by the Florida Public
12 Service Commission a person who resells water service
13 to certain tenants or residents up to a specified
14 percentage or cost; amending s. 367.081, F.S.;
15 authorizing the commission to create a utility reserve
16 fund; requiring the commission to adopt rules to
17 govern the implementation, management, and use of the
18 fund; establishing criteria for adjusted rates;
19 specifying expense items that may be the basis for an
20 automatic increase or decrease of a utility's rates;
21 authorizing the commission to establish by rule
22 additional specified expense items; restricting a
23 utility from recovering more than a certain percentage
24 of reasonable rate case expenses; amending s.
25 367.0814, F.S.; authorizing the commission to award
26 rate case expenses to recover attorney fees or fees of
27 other outside consultants in certain circumstances;
28 requiring the commission to adopt rules by a certain
29 date; amending s. 367.0816, F.S.; prohibiting a

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30 utility from recovering certain expenses for more than
31 one rate case at a time; amending s. 367.111, F.S.;
32 authorizing the commission to review water quality and
33 wastewater service under certain circumstances;
34 amending s. 403.8532, F.S.; authorizing the Department
35 of Environmental Protection to require or request that
36 the Florida Water Pollution Control Financing
37 Corporation make loans, grants, and deposits to for-
38 profit, privately owned, or investor-owned water
39 systems; removing current restrictions on such
40 activities; amending s. 367.171, F.S.; making
41 technical changes; providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

44
45 Section 1. Section 159.8105, Florida Statutes, is created
46 to read:

47 159.8105 Allocation of bonds for water and wastewater
48 infrastructure projects.—The division shall review the
49 allocation of private activity bonds to determine the
50 availability of additional allocation and reallocation of bonds
51 for water and wastewater infrastructure projects.

52 Section 2. Paragraph (ooo) is added to subsection (7) of
53 section 212.08, Florida Statutes, to read:

54 212.08 Sales, rental, use, consumption, distribution, and
55 storage tax; specified exemptions.—The sale at retail, the
56 rental, the use, the consumption, the distribution, and the
57 storage to be used or consumed in this state of the following
58 are hereby specifically exempt from the tax imposed by this

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2016534c1

59 chapter.

60 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
61 entity by this chapter do not inure to any transaction that is
62 otherwise taxable under this chapter when payment is made by a
63 representative or employee of the entity by any means,
64 including, but not limited to, cash, check, or credit card, even
65 when that representative or employee is subsequently reimbursed
66 by the entity. In addition, exemptions provided to any entity by
67 this subsection do not inure to any transaction that is
68 otherwise taxable under this chapter unless the entity has
69 obtained a sales tax exemption certificate from the department
70 or the entity obtains or provides other documentation as
71 required by the department. Eligible purchases or leases made
72 with such a certificate must be in strict compliance with this
73 subsection and departmental rules, and any person who makes an
74 exempt purchase with a certificate that is not in strict
75 compliance with this subsection and the rules is liable for and
76 shall pay the tax. The department may adopt rules to administer
77 this subsection.

78 (ooo) Investor-owned water and wastewater utilities.—Sales
79 or leases to an investor-owned water or wastewater utility are
80 exempt from the tax imposed by this chapter if the sole or
81 primary function of the utility is to construct, maintain, or
82 operate a water or wastewater system in this state and if the
83 goods or services purchased or leased are used in this state.

84 Section 3. Present subsections (9) through (12) of section
85 367.022, Florida Statutes, are redesignated as subsections (10)
86 through (13), respectively, and a new subsection (9) is added to
87 that section, to read:

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2016534c1

88 367.022 Exemptions.—The following are not subject to
89 regulation by the commission as a utility nor are they subject
90 to the provisions of this chapter, except as expressly provided:

91 (9) Any person who resells water service to his or her
92 tenants or to individually metered residents for a fee that does
93 not exceed the actual purchase price of the water plus the
94 actual cost of meter reading and billing, not to exceed 9
95 percent of the actual cost of service.

96 Section 4. Paragraph (c) is added to subsection (2) of
97 section 367.081, Florida Statutes, and paragraph (b) of
98 subsection (4) and subsection (7) of that section are amended,
99 to read:

100 367.081 Rates; procedure for fixing and changing.—

101 (2)

102 (c) In establishing rates for a utility, the commission may
103 create a utility reserve fund for infrastructure repair and
104 replacement for a utility for existing distribution and
105 collection infrastructure that is nearing the end of its useful
106 life or is detrimental to water quality or reliability of
107 service, to be funded by a portion of the rates charged by the
108 utility, by a secured escrow account, or through a letter of
109 credit. The commission shall adopt rules to govern the
110 implementation, management, and use of the fund, including, but
111 not limited to, rules related to expenses for which the fund may
112 be used, segregation of reserve account funds, requirements for
113 a capital improvement plan, and requirements for commission
114 authorization before disbursements are made from the fund.

115 (4)

116 (b) The approved rates of any utility ~~which receives all or~~

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2016534c1

117 ~~any portion of its utility service from a governmental authority~~
118 ~~or from a water or wastewater utility regulated by the~~
119 ~~commission and which redistributes that service to its utility~~
120 ~~customers shall be automatically increased or decreased without~~
121 ~~hearing, upon verified notice to the commission 45 days prior to~~
122 ~~its implementation of the increase or decrease that the~~
123 ~~utility's costs for any specified expense item the rates charged~~
124 ~~by the governmental authority or other utility have changed. The~~
125 ~~approved rates of any utility which is subject to an increase or~~
126 ~~decrease in the rates or fees that it is charged for electric~~
127 ~~power, the amount of ad valorem taxes assessed against its used~~
128 ~~and useful property, the fees charged by the Department of~~
129 ~~Environmental Protection in connection with the National~~
130 ~~Pollutant Discharge Elimination System Program, or the~~
131 ~~regulatory assessment fees imposed upon it by the commission~~
132 ~~shall be increased or decreased by the utility, without action~~
133 ~~by the commission, upon verified notice to the commission 45~~
134 ~~days prior to its implementation of the increase or decrease~~
135 ~~that the rates charged by the supplier of the electric power or~~
136 ~~the taxes imposed by the governmental authority, or the~~
137 ~~regulatory assessment fees imposed upon it by the commission~~
138 ~~have changed. The new rates authorized shall reflect the amount~~
139 ~~of the change of the ad valorem taxes or rates imposed upon the~~
140 ~~utility by the governmental authority, other utility, or~~
141 ~~supplier of electric power, or the regulatory assessment fees~~
142 ~~imposed upon it by the commission. The approved rates of any~~
143 ~~utility shall be automatically increased, without hearing, upon~~
144 ~~verified notice to the commission 45 days prior to~~
145 ~~implementation of the increase that costs have been incurred for~~

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146 ~~water quality or wastewater quality testing required by the~~
147 ~~Department of Environmental Protection.~~

148 1. The new rates authorized shall reflect, on an amortized
149 or annual basis, as appropriate, the cost of, or the amount of
150 change in the cost of, the specified expense item, ~~required~~
151 ~~water quality or wastewater quality testing performed by~~
152 ~~laboratories approved by the Department of Environmental~~
153 ~~Protection for that purpose. The new rates, however, shall not~~
154 ~~reflect the costs of any specified expense item any required~~
155 ~~water quality or wastewater quality testing already included in~~
156 ~~a utility's rates. Specified expense items that are eligible for~~
157 ~~automatic increase or decrease of a utility's rates include, but~~
158 ~~are not limited to:~~

159 a. The rates charged by a governmental authority or other
160 water or wastewater utility regulated by the commission which
161 provides utility service to the utility.

162 b. The rates or fees that the utility is charged for
163 electric power.

164 c. The amount of ad valorem taxes assessed against the
165 utility's used and useful property.

166 d. The fees charged by the Department of Environmental
167 Protection in connection with the National Pollutant Discharge
168 Elimination System Program.

169 e. The regulatory assessment fees imposed upon the utility
170 by the commission.

171 f. Costs incurred for water quality or wastewater quality
172 testing required by the Department of Environmental Protection.

173 g. The fees charged for wastewater biosolids disposal.

174 h. Costs incurred for any tank inspection required by the

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175 Department of Environmental Protection or a local governmental
176 authority.

177 i. Treatment plant operator and water distribution system
178 operator license fees required by the Department of
179 Environmental Protection or a local governmental authority.

180 j. Water or wastewater operating permit fees charged by the
181 Department of Environmental Protection or a local governmental
182 authority.

183 k. Consumptive or water use permit fees charged by a water
184 management district.

185 2. A utility may not use this procedure to increase its
186 rates as a result of an increase in a specific expense item
187 which occurred ~~water quality or wastewater quality testing or an~~
188 increase in the cost of purchased water services, sewer
189 services, or electric power or in assessed ad valorem taxes,
190 which increase was initiated more than 12 months before the
191 filing by the utility.

192 3. The commission may establish by rule additional specific
193 expense items that are outside the control of the utility and
194 have been imposed upon the utility by a federal, state, or local
195 law, rule, order, or notice. If the commission establishes such
196 a rule, the commission shall review the rule at least once every
197 5 years and determine if each expense item should continue to be
198 cause for an automatic increase or decrease and whether
199 additional items should be included.

200 4. ~~The provisions of~~ This subsection does ~~de~~ not prevent a
201 utility from seeking a change in rates pursuant to ~~the~~
202 ~~provisions of~~ subsection (2).

203 (7) The commission shall determine the reasonableness of

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204 rate case expenses and shall disallow all rate case expenses
205 determined to be unreasonable. No rate case expense determined
206 to be unreasonable shall be paid by a consumer. In determining
207 the reasonable level of rate case expense, the commission shall
208 consider the extent to which a utility has utilized or failed to
209 utilize ~~the provisions of~~ paragraph (4) (a) or paragraph (4) (b)
210 and such other criteria as it may establish by rule. A utility
211 may recover only up to 50 percent of rate case expenses that are
212 determined to be reasonable.

213 Section 5. Subsection (3) of section 367.0814, Florida
214 Statutes, is amended to read:

215 367.0814 Staff assistance in changing rates and charges;
216 interim rates.—

217 (3) The provisions of s. 367.081(1), (2) (a), and (3) shall
218 apply in determining the utility's rates and charges. However,
219 the commission may not award rate case expenses to recover
220 attorney fees or fees of other outside consultants who are
221 engaged for the purpose of preparing or filing the case if a
222 utility receives staff assistance in changing rates and charges
223 pursuant to this section, unless the Office of Public Counsel or
224 interested parties have intervened. The commission may award
225 rate case expenses for attorney fees or fees of other outside
226 consultants if such fees are incurred for the purpose of
227 providing consulting or legal services to the utility after the
228 initial staff report is made available to customers and the
229 utility. If there is a protest or appeal by a party other than
230 the utility, the commission may award rate case expenses to the
231 utility for attorney fees or fees of other outside consultants
232 for costs incurred after the protest or appeal. By December 31,

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233 2016, the commission must adopt rules to administer this
234 subsection.

235 Section 6. Section 367.0816, Florida Statutes, is amended
236 to read:

237 367.0816 Recovery of rate case expenses.—

238 (1) The amount of rate case expense determined by the
239 commission pursuant to the provisions of this chapter to be
240 recovered through a public utilities rate shall be apportioned
241 for recovery over a period of 4 years. At the conclusion of the
242 recovery period, the rate of the public utility shall be reduced
243 immediately by the amount of rate case expense previously
244 included in rates.

245 (2) A utility may not recover the 4-year amortized rate
246 case expense for more than one rate case at any given time. If
247 the commission approves and a utility implements a rate change
248 from a subsequent rate case pursuant to this section, any
249 unamortized rate case expense for a prior rate case must be
250 discontinued. The unamortized portion of rate case expense for a
251 prior rate case must be removed from rates before the
252 implementation of an additional amortized rate case expense for
253 the most recent rate proceeding.

254 Section 7. Subsection (3) is added to section 367.111,
255 Florida Statutes, to read:

256 367.111 Service.—

257 (3) The commission may, on its own motion or based on
258 complaints of customers of a water utility subject to its
259 jurisdiction, review water quality as it pertains to secondary
260 drinking water standards established by the Department of
261 Environmental Protection. The commission may, on its own motion

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262 or based on complaints of customers of a wastewater utility
263 subject to its jurisdiction, review wastewater service as it
264 pertains to odor, noise, aerosol drift, or lighting.

265 Section 8. Subsection (3) of section 403.8532, Florida
266 Statutes, is amended to read:

267 403.8532 Drinking water state revolving loan fund; use;
268 rules.—

269 (3) The department may make, or request that the
270 corporation make, loans, grants, and deposits to community water
271 systems; for-profit, privately owned, or investor-owned water
272 systems; ~~nonprofit, transient, noncommunity water systems;~~ and
273 nonprofit, nontransient, noncommunity water systems to assist
274 them in planning, designing, and constructing public water
275 systems, ~~unless such public water systems are for profit~~
276 ~~privately owned or investor-owned systems that regularly serve~~
277 ~~1,500 service connections or more within a single certified or~~
278 ~~franchised area. However, a for-profit privately owned or~~
279 ~~investor-owned public water system that regularly serves 1,500~~
280 ~~service connections or more within a single certified or~~
281 ~~franchised area may qualify for a loan only if the proposed~~
282 ~~project will result in the consolidation of two or more public~~
283 ~~water systems.~~ The department may provide loan guarantees,
284 purchase loan insurance, and refinance local debt through the
285 issue of new loans for projects approved by the department.
286 Public water systems may borrow funds made available pursuant to
287 this section and may pledge any revenues or other adequate
288 security available to them to repay any funds borrowed.

289 (a) The department shall administer loans so that amounts
290 credited to the Drinking Water Revolving Loan Trust Fund in any

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291 fiscal year are reserved for the following purposes:

292 1. At least 15 percent for qualifying small public water
293 systems.

294 2. Up to 15 percent for qualifying financially
295 disadvantaged communities.

296 (b) If an insufficient number of the projects for which
297 funds are reserved under this subsection have been submitted to
298 the department at the time the funding priority list authorized
299 under this section is adopted, the reservation of these funds no
300 longer applies. The department may award the unreserved funds as
301 otherwise provided in this section.

302 Section 9. Subsection (8) of section 367.171, Florida
303 Statutes, is amended to read:

304 367.171 Effectiveness of this chapter.-

305 (8) Each county that ~~which~~ is not subject to ~~excluded from~~
306 ~~the provisions of~~ this chapter shall regulate the rates of all
307 utilities in that county which would otherwise be subject to
308 regulation by the commission pursuant to s. 367.081(1), (2),
309 (3), and (6) and s. 367.165. The county shall not regulate the
310 rates or charges of any system or facility that ~~which~~ would
311 otherwise be exempt from commission regulation pursuant to s.
312 367.022(2). For this purpose the county or its agency shall
313 proceed as though the county or agency is the commission.

314 Section 10. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG
17th District

Legg.John.web@FLSenate.gov

January 11, 2016

The Honorable Denise Grimsley
Committee on Communications, Energy, and Public Utilities, Chair
337 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 324 - Utility Projects

Dear Chair Grimsley:

SB 324: Utility Projects is on the Committee on Communications, Energy, and Public Utilities agenda January 12, 2016. I will be at the Committee on Ethics and Elections meeting, and I will be unable to attend.

Please recognize my Legislative Assistant, Jim Browne, to present SB 324 on my behalf. Should you have any questions, please feel free to contact me. Your consideration is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg".

John Legg
State Senator, District 17

cc: Diana Caldwell, Staff Director
Kim Bonn, Administrative Assistant

REPLY TO:

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

MCKENZIE.GARY

From: GRIMSLEY.DENISE
Sent: Tuesday, January 12, 2016 8:53 AM
To: Secretary of the Senate; Andy Gardiner
Subject: January 12

President Gardiner,
I had to return home unexpectedly because my Dad was admitted to the hospital. Please excuse me from senate business today.
Denise Grimsley.
Sent from my iPhone

*Okay
D Grimsley
12 Jan 2016*

The Florida Senate
State Senator René García
38th District

Please reply to:

□ **District Office:**

1490 West 68 Street
Suite # 201
Hialeah, FL. 33014
Phone# (305) 364-3100

January 12, 2016

The Honorable Denise Grimsley
Chair, Committee on Communications, Energy and Public Utilities
337 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Grimsley:

Please excuse my absence from the Committee on Communications, Energy and Public Utilities on January 12, as I had an urgent matter to attend to during the time the committee was scheduled.

Sincerely,



State Senator René García
District 38
RG:AD

CC: Diana Caldwell, Kim Bonn

Committees: Appropriations Subcommittee on Health & Human Services, Chairman, Appropriations, Children, Families, and Elderly Affairs, Health Policy, Agriculture, Education Pre-K – 12, Joint Legislative Budget Committee and Communications, Energy and Public Utilities.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/12/2016
Meeting Date

3B 324
Bill Number (if applicable)

Topic WATER + SEWER FINANCING

Amendment Barcode (if applicable)

Name HOWARD E. "GENE" ADAMS

Job Title ATTORNEY

Address 215 SOUTH MONROE ST., 2ND FLOOR Phone 850/222-3533

Street

City

TALAHASSEE

FLA

State

32301-1839

Zip

Email GENE@PENNINGTONLAW.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA GOVERNMENTAL UTILITY ASSOC.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

TAB 1

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-12-16
Meeting Date

324
Bill Number (if applicable)

Topic Utility Bonds

Amendment Barcode (if applicable)

Name Robert Sheets

Job Title Systems Manager

Address 1500 Mahan Drive

Phone 850-294-0749

Tallahassee FL 32308
City State Zip

Email rsheets@govserv.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Government Utilities Authority

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: SB 301

Case No.:

Type:

Caption: Senate Communications, Energy, and Public Utilities Committee

Judge:

Started: 1/12/2016 2:02:08 PM

Ends: 1/12/2016 2:10:45 PM

Length: 00:08:38

2:02:14 PM Meeting called to order
2:02:18 PM Quorum present
2:02:30 PM Roll call
2:03:02 PM Senator Hukill's opening remarks
2:03:25 PM Tab 2 CS/SB 534 Water and Wastewater presented by Senator Hays
2:04:37 PM Amendment 146416 presented by Senator Hays
2:07:25 PM Senator Evers sponsoring the amendment in place of Senator Dean
2:07:36 PM Amendment 146416 adopted
2:08:00 PM Roll call on CS/CS/SB 534 as amended
2:08:19 PM CS/CS/SB 534 is reported favorably
2:08:39 PM Tab 1 SB 324 Utility Projects presented by Senator Legg's legislative assistant
2:09:17 PM Senator Dean now present
2:09:31 PM Howard Adams from the FL Governmental Utility Assoc. waives in support
2:09:46 PM Robert Sheets with FL Government Utilities Authority waives in support
2:09:57 PM SB 324 roll call
2:10:14 PM SB 324 reported favorably
2:10:37 PM Senator Dean would like to be reported voting in the affirmative on CS/SB 534
2:10:39 PM Meeting adjourned