

**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 Environmental Preservation and Conservation

---

BILL: CS/CS/SB 1050

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

SUBJECT: Water and Wastewater Utility Systems

DATE: April 11, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	<b>Fav/CS</b>
2.	Gudeman	Uchino	EP	<b>Fav/CS</b>
3.			AFT	
4.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 1050:

- Directs the Division of Bond Finance to review the allocation of private activity bonds for water and wastewater projects;
- Provides an exemption for individuals who resell water service;
- Provides a mechanism within a rate case for the identification and potential resolution of issues involving secondary drinking water standards;
- Requires utilities that do not meet secondary wastewater standards to take certain actions;
- Requires the Public Service Commission (PSC) to adopt rules for compliance requirements and enforcement actions related to secondary water quality standards;
- Allows utilities to recover costs associated with secondary drinking water standards or certain wastewater service issues;
- Authorizes the PSC to create an individual investor-owned utility (IOU) reserve fund and requires the PSC to adopt rules;
- Identifies specific types of expenses eligible for an automatic rate increase or decrease outside of a rate case (also known as pass through treatment) and requires the PSC to adopt rules;
- Authorizes the PSC to establish rules for additional expenses that may be eligible for an automatic rate increase or decrease outside of a rate case;

- Authorizes water utilities to establish a surcharge to recover fixed costs of system improvements intended to maintain or achieve compliance with secondary drinking water standards; and
- Expands the availability of low-interest loans through the Drinking Water State Revolving Loan Fund (SRF) to all for-profit water utilities.

## II. Present Situation:

### Investor-Owned Water and Wastewater Utility Systems Overview

Water and wastewater services can be provided through privately-owned and operated water and wastewater companies, which are referred to as “investor-owned utilities,” or “IOUs.” The term “utility” is defined as, “a water or wastewater utility and, except as provided in s. 367.022, F.S., includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide water or wastewater service to the public for compensation.”<sup>1</sup> An IOU can range in size from very small systems, owned by an individual as a sole proprietorship and serving only a few dozen customers, to systems owned by large interstate corporations serving tens of thousands of customers in multiple counties.<sup>2</sup> The remaining water and wastewater customers are served 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.<sup>3</sup>

Chapter 367, F.S., concerning water and wastewater systems, grants the PSC exclusive jurisdiction over each utility with respect to its authority, service, and rates. Water and wastewater IOUs that operate within a single Florida county have the option to regulate their rates and service or allow the PSC to regulate those rates and services.<sup>4</sup> Water and wastewater IOUs whose service areas cross county boundaries are regulated by the PSC, unless regulated by an intergovernmental authority.<sup>5</sup> The PSC currently has jurisdiction over water and wastewater IOUs in 37 of 67 counties in Florida, accounting for approximately 120,537 water customers and 74,317 wastewater customers.<sup>6</sup>

For regulatory purposes, the PSC classifies IOUs into one of three categories based on annual operating revenues:<sup>7</sup>

- Class A has operating revenues of \$1,000,000 or more;
- Class B has operating revenues of \$200,000 or more but less than \$1,000,000; and
- Class C has operating revenues less than \$200,000.

---

<sup>1</sup> Section 367.021(12), F.S.

<sup>2</sup> Florida Public Service Commission, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, 17 (Feb. 2013), available at <http://www.floridapsc.com/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last visited Apr. 7, 2014).

<sup>3</sup> Section 367.022(2), F.S.

<sup>4</sup> Section 367.171, F.S.

<sup>5</sup> Section 367.171(7), F.S.

<sup>6</sup> Florida Public Service Commission, *Facts and Figures of the Florida Utility Industry*, 29 (April 2013), available at <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2013.pdf> (last visited Apr. 7, 2014).

<sup>7</sup> 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.

As of 2012, there were 14 Class A utilities, 33 Class B utilities, and 93 Class C utilities under the PSC's jurisdiction.<sup>8</sup>

### **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) to, “identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers,” and to research possible solutions.<sup>9</sup> The study committee was comprised of 18 members, including 15 voting members and three non-voting members.<sup>10</sup> The study committee was required to consider:

- The ability of small IOUs to achieve economies of scale when purchasing equipment, commodities, or services;
- The availability of low interest loans to small water or wastewater IOUs;
- Any tax incentives or exemptions, temporary or permanent, which are available to small water or wastewater IOUs;
- The impact on customer rates if a utility purchases an existing water or wastewater utility system;
- The impact of a utility providing service through the use of a reseller on customer rates; and
- Other issues that the study committee identifies during its investigation.<sup>11</sup>

The study committee submitted a report with recommendations to the Governor, President of the Senate, and the Speaker of the House of Representatives and on February 15, 2013.<sup>12</sup> The report made the following recommendations for consideration by the Legislature:

- Increase the availability of low-interest loans to small water and wastewater IOUs by:
  - Expanding availability of low-interest loans through the SRF to all for-profit water utilities;
  - Allowing IOUs to apply pass through treatment for loan service fees or loan origination fees for eligible projects identified by the PSC; and
  - Reviewing the allocation of private activity bonds to determine how much is currently allocated to water and wastewater projects, how much of the allocation is unused or reallocated, and whether any additional amount of private activity bonds should be used for water and wastewater infrastructure;
- Provide ad valorem tax exemptions for real property that is dedicated to providing potable water;
- Provide an ad valorem tax exemption for the property of an IOU owned or operated by a Florida corporation if the rates are established by the governing board of the county or the PSC and the property remains dedicated to providing public utility services;
- Provide a sales tax exemption for sales or leases to a sewer and/or water IOU owned or operated by a Florida corporation if the primary function of the corporation is to construct, maintain, or operate a water or sewer system in Florida;

---

<sup>8</sup> *Supra* note 2.

<sup>9</sup> *Supra* note 2, at 7.

<sup>10</sup> Chapter 2012-187, s. 2, Laws of Fla.

<sup>11</sup> *Id.*

<sup>12</sup> *Supra* note 2, at 7.

- Create an exemption from PSC regulation for persons who resell service to individually-metered end-users at a price that does not exceed actual purchase price of water plus actual costs of meter reading and billing not to exceed 9 percent;
- 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;
- Reduce the impact of rate case expense on customer rates by:
  - Prohibiting the recovery of a rate case expense for attorney or outside consultant fees if the utility receives staff assistance in changing rates and charges;
  - Requiring the utility to recover the four-year amortized rate case expense for only one rate case at a time; and
  - Prohibiting the PSC from awarding rate case expense that exceeds the total rate increase approved by the PSC;
- Provide a mechanism for the resolution of issues involving secondary water and wastewater operational requirements; and
- Identify specific types of expenses eligible for pass through treatment in utility rates, or authorize the PSC to adopt rules identifying such expenses provided the expenses are beyond the utility's control.<sup>13</sup>

### 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.<sup>14</sup> 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 this volume cap limits.<sup>15</sup>

Private activity bonds are administered in Florida by the Division of Bond Finance of the State Board of Administration (the division) under ss. 159.801-159.816, F.S. Each year, the division determines the amount of private activity bonds permitted to be issued in Florida under the Internal Revenue Code. This amount is allocated yearly on January 1 as follows:<sup>16</sup>

- An initial amount is allocated to manufacturing facility projects;
- 50 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;
- 25 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.

---

<sup>13</sup> *Supra* note 2, at 155-161.

<sup>14</sup> 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 Apr. 8, 2014).

<sup>15</sup> *Supra* note 14, at 3.

<sup>16</sup> Section 159.804, F.S.

- 5 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
- 20 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.

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.<sup>17</sup>

### **Resellers of Water Service**

Certain entities that meet the definition of “utility” are exempt from PSC regulation as utilities, including entities who resell water or wastewater service at a rate or charge that does not exceed the actual purchase price of the water or wastewater.<sup>18</sup> 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.<sup>19</sup>

Reseller utilities, such as mobile home parks and subdivisions, are regulated by the PSC and generally have significant investment in distribution and collection lines and other utility equipment. In a rate proceeding, the PSC determines the utility’s investment and expenses related to the facilities it owns and operates, then sets rates accordingly. The cost of the water and wastewater services purchased from a wholesale provider, which are often a significant portion of the customers’ bills, are 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 costs to purchase water or wastewater (and therefore remain exempt from PSC regulation) generally have very little investment in equipment or lines needed to provide the service. These types of resellers include apartment complexes, condominium buildings, and small master-metered shopping centers.<sup>20</sup>

A metered charge for water sends an appropriate price signal to end users and is a means of discouraging indiscriminate use of water. However, if a reseller wishes to install sub-meters and bill those users for their actual water use, the reseller will be unable recover those metering and billing costs without becoming regulated and incurring regulatory costs.<sup>21</sup>

### **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;
- Utilities’ working capital requirements;

---

<sup>17</sup> *Supra* note 2, at 43.

<sup>18</sup> Section 367.022(8), F.S.

<sup>19</sup> *Supra* note 2, at 61.

<sup>20</sup> *Id.*

<sup>21</sup> *Supra* note 2, at 61-62.

- 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. 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.<sup>22</sup>

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 staff issues a written order with the decision on the rate increase. The utility is required to notify the customers of the revised rates.<sup>23</sup>

### Quality of Service and Secondary Standards

The Department of Environmental Protection (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.<sup>24</sup>

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.<sup>25</sup> 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.<sup>26</sup>

The DEP has not adopted secondary wastewater standards. 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.<sup>27</sup> 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.<sup>28</sup> If the existing facilities fail to function as intended and create such adverse effects, the permittee must take corrective action.<sup>29</sup> The DEP may also require corrective action if there are significant complaints or if a primary contaminant level has been exceeded.<sup>30</sup>

---

<sup>22</sup>Florida Public Service Commission, *Utility Ratemaking in Florida* (October 2012), available at <http://www.floridapsc.com/publications/consumer/brochure/Ratemaking.pdf#search=ratemaking> (last visited Apr. 8, 2014).

<sup>23</sup> *Id.*

<sup>24</sup> 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.

<sup>25</sup> Rule 62-550.320, F.A.C.

<sup>26</sup> *Supra* note 2, at 113.

<sup>27</sup> Rule 62-600.400(2)(a), F.A.C.

<sup>28</sup> *Id.*

<sup>29</sup> Rule 62-600.410, F.A.C.

<sup>30</sup> *Supra* note 2, at 113.

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.<sup>31</sup> 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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup>

### **Reserve Funds for Water and Wastewater Utilities**

The study committee considered the availability of low interest loans to small IOUs. The report noted that affordable and accessible financing is problematic for smaller IOUs because of the risk associated with smaller utilities, insufficient cash reserves, and the limitations of current regulatory policy. During a critical system failure, the smaller IOUs may be unable to address that failure because of limited available funds. In addition, loans typically do not provide sufficient cash flow to fully address the financial needs over the life of the loan. The study committee reports that the establishment of individual utility reserve funding and/or the creation of a statewide reserve fund could reduce borrowing costs and make funding more readily available.<sup>35</sup>

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.

### **Pass Through Rate Adjustment**

A pass through rate adjustment allows a utility to increase or decrease its rates to reflect an increase or decrease in certain expenses without the requirement of the PSC.<sup>36</sup> 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:

- Purchased water or wastewater service;
- Electric power;
- Ad valorem taxes;
- Regulatory assessment fees;
- DEP fees for the National Pollutant Discharge Elimination System Program; and
- Water or wastewater quality testing required by the DEP.<sup>37</sup>

---

<sup>31</sup> Rule 25-30.433(1), F.A.C.

<sup>32</sup> *Id.*

<sup>33</sup> *Supra* note 2, at 106.

<sup>34</sup> Section 367.111(2), F.S.

<sup>35</sup> *Supra* note 2, at 67.

<sup>36</sup> Section 367.081(4)(b), F.S.

<sup>37</sup> *Id.*

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 rate changes are 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.<sup>38</sup>

### **Drinking Water State Revolving Loan Fund**

Sections 403.8532 and 403.8533, F.S., establish the SRF, which is administered by the DEP. The fund provides low-interest loans to eligible entities for planning, designing, and constructing public water facilities. An investor-owned public water system that is legally responsible for public water services and serves no more than 1,500 connections is eligible for a loan. An investor-owned public water system that serves more than 1,500 connections may qualify for a loan only if the proposed project will result in the consolidation of two or more public water systems.<sup>39</sup> Loan funding is based on a priority system that takes into account public health considerations, compliance, and affordability.<sup>40</sup>

Based on data gathered by the study committee, it was determined that all Class C water IOUs and 28 out of 33 Class B water IOUs serve no more than 1,500 connections and are eligible for the SRF program. The remaining PSC-regulated Class B and Class A water IOUs are not eligible to use the SRF program. The report notes that this data does not include water IOUs that are regulated by counties.<sup>41</sup>

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 159.8105, F.S., 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 allocations or reallocation of private activity bonds for water and wastewater infrastructure projects.

**Section 2** amends s. 367.022, F.S., creating an exemption from PSC regulation for a 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 plus up to 9 percent of the actual purchase price or the actual cost of meter reading and billing. The bill makes technical and conforming changes.

**Section 3** amends s. 367.081, F.S., creating a mechanism, within the context of a rate case, for the identification and potential resolution of issues involving secondary drinking water standards adopted by the DEP and wastewater operational requirements.

The PSC, in determining the value and quality of water service provided by an IOU, is required to consider the extent to which the IOU meets secondary drinking water standards established by the DEP and the local government. The PSC must consider:

- Testimony and evidence provided by customers and the utility;

---

<sup>38</sup> Section 367.081(4)(c), F.S.

<sup>39</sup> Section 403.8532(3), F.S.

<sup>40</sup> Section 403.8532(9)(a), F.S.

<sup>41</sup> *Supra* note 2, at 36-37.

- Complaints that relate to secondary drinking water standards filed during the previous five years with the PSC, the DEP, county health departments, or the local government;
- Results of past tests required by the DEP or county health department to measure compliance with secondary standards; and
- Results of other tests that the PSC deems necessary.

The bill requires the PSC to consider the extent to which the IOU is in compliance with the rules or ordinances that govern wastewater services. The PSC must consider:

- Testimony and evidence provided by customers and the utility; and
- Complaints regarding violations of governing rules or ordinances that have been filed during the previous five years with the PSC, the DEP, county health department, or the local government.

If, as a result of these analyses, the PSC determines that the IOU's water service does not meet secondary drinking water standards or that the IOU's wastewater service adversely affects customers due to a violation of the rules or ordinances governing its operation, the IOU must take the following steps:

- Provide estimates of the costs and benefits of various solutions to the problems;
- Meet with its customers to discuss the costs and benefits of the various solutions; and
- Report the conclusions of these customer meetings to the PSC.

The PSC is required to adopt rules necessary to assess and enforce the IOU's compliance with these provisions. The rules must prescribe penalties, including fines and reduction of return on equity of up to 100 basis points, if an IOU does not adequately address or offer solutions to the water or wastewater problems.

The bill allows a utility to recover the costs and expenses incurred to resolve deficiencies found by the PSC or the DEP with respect to secondary drinking water standards or certain wastewater service issues. The costs are recoverable through a rate case or separate proceeding initiated by petition of the utility. The utility must describe in its petition the activities and costs projected or incurred to resolve the deficiencies found by the PSC or the DEP. The costs may be a result of action agreed upon by the utility and the PSC, or the DEP, or as a consequence of a consent order.

The bill authorizes the PSC to create a utility reserve fund for a water or wastewater IOU. The PSC is directed to adopt rules that include:

- Provisions related to the expenses for which the fund may be used;
- Segregation of the reserve fund accounts;
- Requirements for the IOU to maintain a capital improvement plan; and
- Requirements for PSC authorization prior to disbursements from the fund.

The bill expands the types of expenses eligible for pass through treatment in IOU rates by adding the following expense items:

- Rates charged by a governmental authority or other regulated water or wastewater utility that provides utility service to the utility;
- Rates or fees the utility is charged for electric power;

- Ad valorem taxes assessed against the utility's used and useful property;
- Fees charged by the DEP in connection with the National Pollutant Discharge Elimination System permit program;
- Regulatory assessment fees imposed by the PSC;
- Costs for water quality or wastewater quality testing required by the DEP;
- Fees charged for wastewater biosolids removal;
- A loan service fee or loan origination fee associated with a loan related to an eligible project;
- Costs incurred for a tank inspection required by the DEP or a local government authority;
- Operator and distribution license fees required by the DEP or a local government authority;
- Water or wastewater operating permit fees charged by the DEP or a local government authority; and
- Consumptive or water use permit fees charged by a water management district.

The bill requires the PSC to adopt rules that determine the types of projects that are considered eligible. The eligible projects are limited to those associated with new infrastructure or improvements to existing infrastructure needed to achieve or maintain compliance with federal or state primary or secondary drinking water standards or wastewater treatment standards that relate to:

- The provision of water or wastewater service for existing customers;
- The remediation or prevention of a violation of primary or secondary health standards;
- The replacement or upgrade of aging water or wastewater infrastructure if needed to achieve or maintain compliance with federal or state primary or secondary drinking water regulations; or
- Projects consistent with the most recent long-range plan of the IOU on file with PSC, except for projects primarily intended to serve future growth.

The bill specifies an IOU may not increase or decrease its rates as a result of an increase or decrease in a specific expense item which occurred more than 12 months before the filing by the IOU.

The bill authorizes the PSC to adopt rules establishing additional specific expense items eligible for pass through treatment. To be eligible for such treatment, an additional expense item must be imposed by a federal, state, or local 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 five 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 authorizes a water utility to file tariffs establishing a surcharge, or other methods for the automatic adjustment of its rates. The surcharge is to provide for recovery of the costs associated with the depreciation and pretax returns of certain system improvement projects. The projects must be approved by the PSC and placed in service between base rate proceedings and must be for the purpose of achieving compliance with secondary drinking water quality standards adopted by the DEP. The PSC must prescribe procedures the utility must follow in establishing a sliding scale or other automatic adjustment method.

The bill makes technical and conforming changes.

**Section 4** amends s. 367.0814, F.S., making technical and conforming changes.

**Section 5** amends s. 403.8532, F.S., authorizing the DEP to make, 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 regardless of the number of service connections.

**Section 6** provides an effective date of July 1, 2014.

#### **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:

The expanded availability of low-interest financing through the SRF to additional water IOUs may encourage more of these utilities to make investments in water infrastructure at a lower cost to ratepayers.

Water and wastewater IOUs may be encouraged to make investments in water and wastewater infrastructure at a lower cost to ratepayers as a result of the additional private activity bonds that are made available.

The creation of a regulatory exemption for water resellers who add no more than the costs of meter reading and billing or, alternatively, up to a 9 percent charge to their purchase price for water, will remove the costs and obligations of regulation for the resellers and may encourage them to invest in individual metering apparatus.

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.

The establishment of individual 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 who would have otherwise been responsible for this expense.

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

Depending on the PSC's application of the mechanism established to identify and potentially resolve secondary water quality issues and wastewater operational issues, IOUs may be compelled to incur additional costs to resolve these issues. To the extent that an IOU is compelled to incur additional costs, these costs will likely be recovered from ratepayers.

**C. Government Sector Impact:**

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.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides a list of specified expense items eligible for pass through treatment in IOU rates but indicates that the list is not exclusive. Thus, the bill appears ambiguous as to what types of other expense items might also be eligible for pass through treatment. Further, the direction in s. 367.081(7), F.S., that "the commission shall prescribe the specific procedures to be followed in establishing the sliding scale, or other automatic adjustment method," is unclear.

With respect to the mechanism established to identify and address issues involving secondary drinking water standards and wastewater operational requirements, the bill does not require that the IOU make repairs or improvements to resolve an identified issue but requires the PSC to establish, by rule, penalties for an IOU's failure to "adequately address" the problem. Thus, it is unclear what is required of a utility to "adequately address" a problem or when an IOU would be penalized.

Also, with respect to secondary water standards, the provisions of this bill conflict with those of SB 272, which has passed all committees of reference.

**VIII. Statutes Affected:**

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

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 Environmental Preservation and Conservation on April 10, 2014:**

- Removes the reference to taste, odor, color, or corrosiveness adopted by the DEP;
- Requires the PSC to consider the secondary drinking water standards adopted by the DEP;
- Removes the reference to odor, noise, aerosol drift, or lighting in evaluating wastewater service;
- Requires the PSC to determine the value and quality of wastewater service provided by considering the extent to which a utility complies with the rules and ordinances governing the wastewater service;
- Replaces the term “sludge” with the term “biosolids”; and
- Removes the references to achieving or maintaining compliance with primary or secondary drinking water standards required by local governments.

**CS by Communications, Energy, and Public Utilities on April 1, 2014:**

- Removes a proposed sales tax exemption;
- Allows utilities to recover costs incurred to resolve deficiencies found by the PSC or DEP with respect to secondary drinking water standards or certain wastewater service issues;
- Authorizes water utilities to establish a surcharge to recover fixed costs of system improvements intended to maintain or achieve compliance with secondary drinking water standards; and
- Removes proposed limits on rate case expense recovery.

**B. Amendments:**

None.