

**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.)

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Prepared By: The Professional Staff of the Committee on Environmental Preservation and Conservation

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BILL: CS/SB 534

INTRODUCER: Environmental Preservation and Conservation Committee and Senator Hays

SUBJECT: Water and Wastewater

DATE: November 19, 2015      REVISED: \_\_\_\_\_

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 534:

- Directs the Division of Bond Finance of the State Board of Administration to review the allocation of private activity bonds for water and wastewater projects;
- Provides a sales tax exemption to certain water and wastewater investor-owned utilities (IOUs);
- Provides an exemption for entities who resell water service to allow recovery of certain costs;
- Authorizes the Public Service Commission (PSC) to create an IOU reserve fund and requires the PSC to adopt rules;
- Adds additional expenses eligible for an automatic rate increase or decrease outside of a rate case (also known as pass-through treatment) and authorizes the PSC to adopt rules;
- Limits the amount that can be recovered for rate case expenses by water and wastewater IOUs;
- Limits the ability of the PSC to award rate case expenses;
- Eliminates the accumulation of rate case expenses by specifying a utility may not recover approved rate case expenses for more than one rate case at a time;
- Allows the PSC to review secondary drinking water quality standards of a water utility subject to its jurisdiction, or wastewater service as it relates to certain standards for a wastewater utility subject to its jurisdiction; and
- Expands the availability of low-interest loans through the Drinking Water State Revolving Fund Program (DWSRF) to all for-profit water utilities.

## II. Present Situation:

### Sales Tax Exemptions

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)<sup>1</sup> and is administered by the Department of Revenue (DOR) under chapter 212, F.S.

### Investor-Owned Water and Wastewater Utility Systems

Water and wastewater services can be provided through privately-owned and operated water and wastewater companies, which are referred to as "investor-owned utilities." 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>2</sup> An investor-owned utility (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>3</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>4</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. A Florida county has the option to regulate the rates and services of water and wastewater IOUs that operate within their jurisdictions or allow the PSC to regulate those rates and services.<sup>5</sup> Water and wastewater IOUs whose service areas cross county boundaries are regulated by the PSC, unless regulated by an intergovernmental authority.<sup>6</sup> As of December, 2014, the PSC has regulatory authority over 149 water and wastewater IOUs in 37 counties in Florida.<sup>7</sup>

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<sup>1</sup> 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).

<sup>2</sup> Section 367.021(12), F.S.

<sup>3</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 Nov. 10, 2015).

<sup>4</sup> Section 367.022(2), F.S.

<sup>5</sup> Section 367.171, F.S.

<sup>6</sup> Section 367.171(7), F.S.

<sup>7</sup> Florida Public Service Commission, *Facts and Figures of the Florida Utility Industry*, 30 (Mar. 2015), available at <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2015.pdf> (last visited Nov. 10, 2015).

For regulatory purposes, the PSC classifies IOUs into one of three categories based on annual operating revenues:<sup>8</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.

As of 2012, there were 14 Class A utilities, 33 Class B utilities, and 93 Class C utilities under the PSC's jurisdiction.<sup>9</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>10</sup> The study committee was comprised of 18 members, including 15 voting members and three non-voting members.<sup>11</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>12</sup>

The study committee submitted a report with recommendations to the Governor and the Legislature on February 15, 2013. 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 Drinking Water State Revolving Fund Program (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 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

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<sup>8</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.

<sup>9</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 Nov. 10, 2015).

<sup>10</sup> *Id.* at 7.

<sup>11</sup> Chapter 2012-187, s. 2, Laws of Fla.

<sup>12</sup> Florida Public Service Commission, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, 27 (Feb. 2013), available at <http://www.floridapsc.com/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last visited Nov. 16, 2015).

- 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 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;
  - 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 nine 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 expenses<sup>13</sup> 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 expenses that exceed 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>14</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>15</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 a limit on the amount of tax-exempt bonds that can be issued in a calendar year.<sup>16</sup>

<sup>13</sup> "Rate case expenses may include legal, engineering, and accounting expenses associated with preparation and processing of a rate case." *Id.* at 9.

<sup>14</sup> *Id.* at 155-161.

<sup>15</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 Nov. 10, 2015).

<sup>16</sup> *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.<sup>17</sup>

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>18</sup>

### **Resellers of Water Service**

Certain entities that meet the definition of “utility” are exempt from PSC regulation as utilities, including entities that resell water or wastewater service at a rate or charge that does not exceed the actual purchase price of the water or wastewater.<sup>19</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>20</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

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<sup>17</sup> Section 159.804, F.S.

<sup>18</sup> 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).

<sup>19</sup> Section 367.022(8), F.S.

<sup>20</sup> Florida Public Service Commission, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, 61 (Feb. 2013), available at <http://www.floridapsc.com/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last visited Nov. 10, 2015).

include apartment complexes, condominium buildings, and small master-metered shopping centers.<sup>21</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 to recover the metering and billing costs being regulated and incurring regulatory costs.<sup>22</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>23</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.

### **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

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<sup>21</sup> *Id.*

<sup>22</sup> Florida Public Service Commission, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, 61-62 (Feb. 2013), available at <http://www.floridapsc.com/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last visited Nov. 10, 2015).

<sup>23</sup> *Id.* at 67.

provide services.<sup>24</sup> Utilities are limited to adjusting their rates twice during any 12-month period.<sup>25</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 commissioners' decision on the rate increase. The utility is required to notify the customers of the revised rates.<sup>26</sup>

### **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 approval.<sup>27</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;
- The Department of Environmental Protection (DEP) fees for the National Pollutant Discharge Elimination System Program; and
- Water or wastewater quality testing required by the DEP.<sup>28</sup>

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>29</sup>

### **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.<sup>30</sup>

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<sup>24</sup> Florida Public Service Commission, *Utility Ratemaking in Florida* (Oct. 2012), available at <http://www.floridapsc.com/publications/consumer/brochure/ratemaking.pdf> (last visited Nov. 10, 2014).

<sup>25</sup> Section 367.081, F.S.

<sup>26</sup> Florida Public Service Commission, *Utility Ratemaking in Florida* (Oct. 2012), available at <http://www.floridapsc.com/publications/consumer/brochure/ratemaking.pdf> (last visited Nov. 10, 2014).

<sup>27</sup> Section 367.081(4)(b), F.S.

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

<sup>29</sup> Section 367.081(4)(c), F.S.

<sup>30</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.

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>31</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>32</sup>

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>33</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>34</sup> If the existing facilities fail to function as intended and create such adverse effects, the permittee must take corrective action.<sup>35</sup> The DEP may also require corrective action if there are significant complaints or if a primary contaminant level has been exceeded.<sup>36</sup>

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>37</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>38</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>39</sup>

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

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<sup>31</sup> Rule 62-550.320, F.A.C.

<sup>32</sup> 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).

<sup>33</sup> Rule 62-600.400(2)(a), F.A.C.

<sup>34</sup> *Id.*

<sup>35</sup> Rule 62-600.410, F.A.C.

<sup>36</sup> 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).

<sup>37</sup> Rule 25-30.433(1), F.A.C.

<sup>38</sup> *Id.*

<sup>39</sup> 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).



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 commission 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.<sup>40</sup>

### **Drinking Water State Revolving Fund Program**

The Drinking Water State Revolving Fund Program (DWSRF) is a federal program administered by the states. The program emphasizes providing funds to small and disadvantaged communities and to programs that encourage pollution prevention as a tool for ensuring safe drinking water.<sup>41</sup> State programs are primarily funded through annual federal grants, state matching funds, loan repayments, and interest earnings.<sup>42</sup> According to the Associate Press, the program has struggled to spend the funds available through the program, despite demand for assistance exceeding the amount available.<sup>43</sup>

In Florida, the DWSRF, 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>44</sup> Loan funding is based on a priority system that takes into account public health considerations, compliance, and affordability.<sup>45</sup>

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<sup>40</sup> Section 367.111(2), F.S.

<sup>41</sup> EPA, *Drinking Water State Revolving Fund*, available at [http://water.epa.gov/grants\\_funding/dwsrf/index.cfm](http://water.epa.gov/grants_funding/dwsrf/index.cfm) (last visited Nov. 12, 2015).

<sup>42</sup> EPA, *Drinking Water State Revolving Fund 2009 Annual Report*, 6 (Nov. 2010), available at [http://water.epa.gov/grants\\_funding/dwsrf/upload/dwsrf-annualreport2009nov2010.pdf](http://water.epa.gov/grants_funding/dwsrf/upload/dwsrf-annualreport2009nov2010.pdf) (last visited Nov. 12, 2015).

<sup>43</sup> Ryan J. Foley, *More than \$1 Billion in Water Funds Unspent*, Herald Tribune, Sept. 29, 2015, available at <http://www.heraldtribune.com/article/20150929/ARTICLE/150929592/2416/NEWS?Title=More-than-1-billion-in-water-funds-unspent&tc=ar> (last visited Nov. 13, 2015).

<sup>44</sup> Section 403.8532(3), F.S.

<sup>45</sup> Section 403.8532(9)(a), F.S.

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 DWSRF. The remaining PSC-regulated Class A and B water IOUs are not eligible to use the DWSRF. The report notes that this data does not include water IOUs that are regulated by counties.<sup>46</sup>

### 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., to provide a tax exemption for sales or leases to investor-owned water or wastewater utilities 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.

**Section 3** amends s. 367.022, F.S., 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 plus the actual cost of meter reading and billing, not to exceed nine percent of the actual cost of 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., to provide the PSC with the authority 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.

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

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<sup>46</sup> Florida Public Service Commission, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, 36-37 (Feb. 2013), available at <http://www.floridapsc.com/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last visited Nov. 10, 2015).

- Consumptive use or water use permit fees charged by a water management district.

Pass-through costs explicitly permitted in current law are the only costs a utility is allowed to pass through to the customer. The bill makes the list of new and existing pass-through costs a nonexhaustive list, which would allow these utilities to pass through costs not explicitly listed in statute. The bill provides that these costs are not eligible to be passed through without a hearing if the increase occurred more than 12 months before the utility files for the rate increase. This has the effect of expanding the existing list of costs currently subject to this restriction.

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 limits the amount of reasonable expenses associated with bringing a rate case that a utility may recover to 50 percent.

**Section 5** amends s. 367.0814, F.S., to detail expenses associated with rate cases that may and may not be recovered.

Allowed	Not Allowed
Expenses for attorney fees or fees of other outside consultants if those fees are incurred for the purpose of providing consulting or legal services to the utility after the initial staff report becomes available.	Expenses for attorney fees or fees of other outside consultants who are engaged for the purpose of preparing or filing the case if a utility receives staff assistance in changing rates and charges, unless the Office of Public Counsel or interested parties have intervened.
Expenses for attorney fees or fees of other outside consultants if there is a protest or appeal by a party other than the utility.	

The bill requires the PSC to adopt rules to administer this provision by December 31, 2016.

**Section 6** amends s. 367.0816, F.S., to prevent a utility from recovering the four-year amortized rate case expense for more than one rate case at any given time. If the PSC approves, and the utility implements, a rate change from a subsequent rate case, any unamortized rate case expense from a prior rate case must be discontinued. The unamortized portion of the previous rate case expense must be removed from rates before the implementation of an additional amortized rate case expense for the most recent rate proceeding.

**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. 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 a restriction on 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. The bill also removes permission for making loans for for-profit, privately owned or investor owned must result in the consolidation of two or more water systems in order to qualify for a loan, since this is rendered unnecessary by the change.

**Section 9** amends s. 367.171, F.S., to provide that counties must regulate rates of a utility providing water and wastewater services that abandons its facilities but is not subject to regulation by the PSC.

**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:**

According to the PSC, it is unknown if the provision limiting rate case expense recovery would violate Amendments V and XIV of the U.S. Constitution; article 1, sections 2 and 9 of the Florida Constitution; and article X, section 6 of the Florida Constitution. The bill may generate litigation by the water and wastewater IOUs concerning the constitutionality of limiting reasonable rate case expenses.<sup>47</sup>

#### **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 -\$3.4 million (-\$3.7 million recurring) of which -\$2.7 million (-\$3.0 million recurring) is on General

<sup>47</sup> PSC, *Senate Bill 776 Agency Analysis* (Mar. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

Revenue, and -\$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.

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 will be forced to forfeit the unamortized rate case expense, increasing costs to the utility and decreasing costs to the ratepayer.

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:**

To reduce the financial risk to the state, the DEP would outsource the financial review of large for-profit, privately owned or investor-owned systems requesting DWSRF funding. Costs would be incurred related to this outsourcing. Service fees collected through DWSRF repayments would be used as the source of funding for this contract; the actual costs would depend on the number of large private systems that request funding. The

DEP estimates this cost to be between \$10,000 and \$100,000 annually for additional staffing resources.<sup>48</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The sales tax exemption provided for in the bill is limited to goods and services used in Florida. However, a seller will not know at the time of sale where the items being sold will be used. To provide the seller with clarity as to when tax should or should not be collected, the Department of Revenue recommends that language be added requiring the purchaser to provide the seller with a written statement certifying the purchaser's entitlement to the exemption.<sup>49</sup>

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.<sup>50</sup>

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.<sup>51</sup>

**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 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

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<sup>48</sup> DEP, *Senate Bill 776 Agency Analysis* (Mar. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>49</sup> DOR, *Senate Bill 776 Agency Analysis* (Apr. 14, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>50</sup> PSC, *Senate Bill 776 Agency Analysis* (Mar. 13, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).

<sup>51</sup> *Id.*

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.