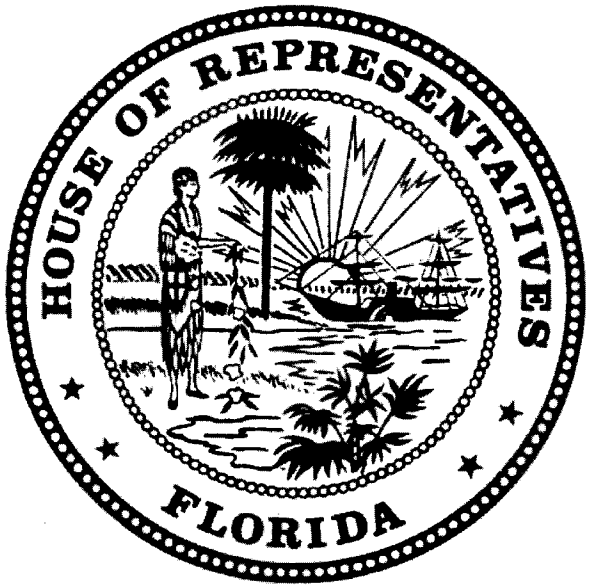

Energy & Utilities Subcommittee

Tuesday, November 17, 2015
9:00 AM
Webster Hall (212 Knott)

MEETING PACKET

Steve Crisafulli
Speaker

Dane Eagle
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Energy & Utilities Subcommittee

Start Date and Time:	Tuesday, November 17, 2015 09:00 am
End Date and Time:	Tuesday, November 17, 2015 11:00 am
Location:	Webster Hall (212 Knott)
Duration:	2.00 hrs

Consideration of the following bill(s):

HJR 193 Renewable Energy Source Devices & Components/Exemption from Certain Taxation & Assessment by Rodrigues, R., Berman
HB 195 Renewable Energy Source Devices by Rodrigues, R.
HB 347 Utility Projects by Sprowls
HB 491 Water and Wastewater by Smith

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Monday, November 16, 2015.

By request of the Chair, all Energy & Utilities Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, November 16, 2015.

NOTICE FINALIZED on 11/10/2015 4:06PM by McCloskey.Michele

The Florida House of Representatives

Regulatory Affairs Committee

Energy & Utilities Subcommittee

Steve Crisafulli
Speaker

Dane Eagle
Chair

AGENDA

Tuesday, November 17, 2015
212 Knott
9:00 am – 11:00 am

I. Call to Order

II. Roll Call

III. Consideration of the following bill(s):

a. HJR 193 Renewable Energy Source Devices & Components/Exemption from Certain Taxation & Assessment by Rodrigues, R., Berman
b. HB 195 Renewable Energy Source Devices by Rodrigues, R.
c. HB 347 Utility Projects by Sprowls
d. HB 491 Water and Wastewater by Smith

IV. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4873 Fax: (850) 413-0419

House Joint Resolution

A joint resolution proposing amendments to Sections 3 and 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution to require the Legislature, by general law, to exempt from ad valorem taxation the assessed value of renewable energy source devices, or components thereof, that are subject to tangible personal property taxes and to allow the Legislature, by general law, to prohibit consideration of such installed devices or components in assessment of the value of real property for the purpose of ad valorem taxation, and to provide an effective date.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Sections 3 and 4 of Article VII and the creation of Section 34 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 3. Taxes; exemptions.—

(a) All property owned by a municipality and used exclusively by it for municipal or public purposes shall be

exempt from taxation. A municipality, owning property outside the municipality, may be required by general law to make payment to the taxing unit in which the property is located. Such portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation.

(b) There shall be exempt from taxation, cumulatively, to every head of a family residing in this state, household goods and personal effects to the value fixed by general law, not less than one thousand dollars, and to every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars.

(c) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant community and economic development ad valorem tax exemptions to new businesses and expansions of existing businesses, as defined by general law. Such an exemption may be granted only by ordinance of the county or municipality, and only after the electors of the county or municipality voting on such question in a referendum authorize the county or municipality to adopt such ordinances. An exemption so granted shall apply to improvements to real property made by or for the use of a new business and improvements to real property related to the expansion of an existing business and shall also apply to tangible personal

property of such new business and tangible personal property related to the expansion of an existing business. The amount or limits of the amount of such exemption shall be specified by general law. The period of time for which such exemption may be granted to a new business or expansion of an existing business shall be determined by general law. The authority to grant such exemption shall expire ten years from the date of approval by the electors of the county or municipality, and may be renewable by referendum as provided by general law.

(d) Any county or municipality may, for the purpose of its respective tax levy and subject to the provisions of this subsection and general law, grant historic preservation ad valorem tax exemptions to owners of historic properties. This exemption may be granted only by ordinance of the county or municipality. The amount or limits of the amount of this exemption and the requirements for eligible properties must be specified by general law. The period of time for which this exemption may be granted to a property owner shall be determined by general law.

(e) By general law and subject to conditions specified therein:~~,~~

(1) Twenty-five thousand dollars of the assessed value of property subject to tangible personal property tax shall be exempt from ad valorem taxation.

(2) The assessed value of a renewable energy source device, or a component thereof, subject to tangible personal

property tax shall be exempt from ad valorem taxation.

(f) There shall be granted an ad valorem tax exemption for real property dedicated in perpetuity for conservation purposes, including real property encumbered by perpetual conservation easements or by other perpetual conservation protections, as defined by general law.

(g) By general law and subject to the conditions specified therein, each person who receives a homestead exemption as provided in section 6 of this article; who was a member of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard; and who was deployed during the preceding calendar year on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature shall receive an additional exemption equal to a percentage of the taxable value of his or her homestead property. The applicable percentage shall be calculated as the number of days during the preceding calendar year the person was deployed on active duty outside the continental United States, Alaska, or Hawaii in support of military operations designated by the legislature divided by the number of days in that year.

SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for

noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (8) apply. Thereafter, the homestead shall be assessed as provided in this subsection.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead, unless the provisions of paragraph (8) apply. That assessment shall only change as provided in this subsection.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(8)a. A person who establishes a new homestead as of January 1, 2009, or January 1 of any subsequent year and who has received a homestead exemption pursuant to Section 6 of this Article as of January 1 of either of the two years immediately preceding the establishment of the new homestead is entitled to

have the new homestead assessed at less than just value. If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007. The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

2. If the just value of the new homestead is less than the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than $500,000, the assessed value of the new homestead shall be increased so that

the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this subsection.

b. By general law and subject to conditions specified therein, the legislature shall provide for application of this paragraph to property owned by more than one person.

(e) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(h) For all levies other than school district levies, assessments of real property that is not subject to the assessment limitations set forth in subsections (a) through (d) and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) The legislature must provide that such property shall be assessed at just value as of the next assessment date after a qualifying improvement, as defined by general law, is made to such property. Thereafter, such property shall be assessed as provided in this subsection.

(4) The legislature may provide that such property shall be assessed at just value as of the next assessment date after a change of ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Thereafter, such property shall be assessed as provided in this subsection.

(5) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property ~~used for residential purposes~~:

(1) Any change or improvement to residential real property

made to improve ~~for the purpose of improving~~ the property's resistance to wind damage.

(2) The installation of a renewable energy source device or a component thereof.

(j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:

a. Land used predominantly for commercial fishing purposes.

b. Land that is accessible to the public and used for vessel launches into waters that are navigable.

c. Marinas and drystacks that are open to the public.

d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

ARTICLE XII

SCHEDULE

SECTION 34. Renewable energy source devices and components thereof; exemption from certain taxation and assessment.—This section, the amendment to subsection (e) of Section 3 of Article VII requiring the legislature, by general law, to exempt the assessed value of a renewable energy source device, or a component thereof, subject to tangible personal property tax from ad valorem taxation, and the amendment to subsection (i) of

Section 4 of Article VII allowing the legislature, by general law, to prohibit consideration of a renewable energy source device, or a component thereof, in assessing the value of real property for the purpose of ad valorem taxation shall take effect on January 1, 2017.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTIONS 3 AND 4

ARTICLE XII, SECTION 34

RENEWABLE ENERGY SOURCE DEVICES AND COMPONENTS THEREOF; EXEMPTION FROM CERTAIN TAXATION AND ASSESSMENT.—Proposing an amendment to the State Constitution to require the Legislature, by general law, to exempt from ad valorem taxation the assessed value of renewable energy source devices, or components thereof, that are subject to tangible personal property taxes and allow the Legislature, by general law, to prohibit consideration of such devices or components in assessing the value of real property for the purpose of ad valorem taxation. This amendment takes effect January 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 193 Renewable Energy Source Devices & Components/Exemption from Certain Taxation & Assessment
SPONSOR(S): Rodrigues and others
TIED BILLS: HB 195 **IDEN./SIM. BILLS:** SJR 170

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Whittier	Keating
2) Finance & Tax Committee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution (Constitution) provides for local government ad valorem taxes on real property and tangible personal property, assessment of property for tax purposes, and exemptions to these taxes. Article VII, section 4 of the Constitution includes the following provisions:

> (i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:
> (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
> (2) The installation of a renewable energy source device.

This provision only addresses residential property. In 2013, the Legislature passed a law implementing the renewable energy source device portion of this provision.

This joint resolution proposes two amendments to the Constitution. The first amendment exempts the assessed value of a renewable energy source device, or a component thereof, from ad valorem taxes. The second amendment authorizes the Legislature to prohibit, by law, a property appraiser from considering the installation of a renewable energy source device, or a component thereof, in the determination of property value for the purpose of ad valorem taxation. This expands the current constitutional provision by specifying that it applies also to a component of a renewable energy source device and by extending it to all real property, not just real property used for residential purposes. This provision is permissive and does not require the Legislature to enact legislation. Any change or improvement to real property for the purposes of resistance to wind damage remains limited to residential real property.

The Revenue Estimating Conference agreed to an estimate of negative indeterminate or zero for HJR 193. If the proposed amendment does not pass, there is no impact; however, if it passes there will be an impact associated with the provisions related to tangible personal property which need no further implementing language. Assuming the legislature also passes HB 195 which includes real property, the combined school and non-school impact would reach a loss of $21.2 million in 2020-21, the fifth year of implementation, holding the 2014 statewide average property tax rates constant.

The joint resolution provides an effective date of January 1, 2017.

The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Constitution (Constitution) provides for finance and taxation, including local government ad valorem taxes on real property and tangible personal property,[1] assessment of property for tax purposes,[2] and exemptions to these taxes.[3]

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, Florida voters added the following authorization to article VII, section 3(d) of the Constitution:

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

During the same year, based on the new constitutional authority, the Legislature approved a property tax exemption for real property on which a renewable energy source device is installed and is being operated.[4] However, the exemption expired after 10 years, as provided in the Constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990. Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The law required that the exemption could be no more than the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.[5]

In December 2000, the last of these exemptions expired.

During the 2008 Legislative Session, HB 7135 (ch. 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

In the November 2008 General Election, Florida voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission, adding the following language to article VII, section 4 of the Florida Constitution:

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[1] FLA. CONST. art. VII, s. 9.
[2] FLA. CONST. art. VII, s. 4.
[3] FLA. CONST. art. VII, s. 3.
[4] ss. 196.175 and 196.012(14), F.S. (2000)
[5] *Id.*

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes: [6]
(1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
(2) The installation of a renewable energy source device.

The constitutional amendment only addressed residential property. In 2013, the Legislature passed a law implementing the renewable energy source device portion of the amendment.

The amendment also repealed the constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which the device is installed and operated. This repealed language had provided the constitutional basis for the legislation passed in 1980 and 2008; thereby nullifying the property tax exemption that the Legislature had just passed.

Property Valuation

Article VII, section 4 of the Constitution, provides that all property, with some exceptions, is to be assessed at "just value." Florida courts define "just value" as the estimated fair market value of the property. The Constitution requires property appraisers to establish the just value of every parcel of real property as of January 1 each year.

"Assessed value of property"[7] is defined as an annual determination of the following:

- The just or fair market value of an item or property;
- The value of a homestead property after application of the "Save Our Homes" assessment limitation;[8] or
- The value of nonhomestead property after application of a 10 percent cap.[9, 10]

Ad Valorem Tax

"Ad valorem tax" means a tax based upon the assessed value of property. The term "property tax" is used interchangeably with the term "ad valorem tax."[11] Local governments may levy ad valorem tax assessments on real property and tangible personal property. "Real property" is defined as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably.[12] "Tangible personal property" means all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are excluded.[13] Anyone who owns tangible personal property on January 1 of each year and who has a proprietorship, partnership, or corporation, or is a self-employed

[6] The 2008 constitutional amendment is permissive and does not *require* the Legislature to enact legislation.
[7] s. 192.001(2), F.S.
[8] The "Save Our Homes" amendment to the Florida Constitution was approved by voters in 1992. This amendment limits annual assessment increases to the lower of: 3 percent of the assessment for the prior year or the change in the Consumer Price Index (CPI) for all urban consumers. See Article VII, section 4(d)(1), Fla. Const.
[9] On January 29, 2008, Florida voters approved a constitutional amendment changing property taxation provisions. Some of the changes provided that the property tax assessment of certain nonhomestead property cannot increase by more than 10 percent per year, so long as ownership of the property does not change. The limitation does not apply to taxes levied by school districts.
[10] "Assessed value" is also the classified use value of agricultural or other special classes of property that are valued based on their current "classified" use rather than on market value.
[11] s. 192.001(1), F.S.
[12] s. 192.001(12), F.S.
[13] s. 192.001(11)(d), F.S.

agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.[14]

Property owners who lease, lend, or rent property must also file. Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to $25,000 of assessed value. A single return must be filed for each site in the county where the owner of tangible personal property transacts business.[15]

The requirement to file an annual tangible personal property return is waived for taxpayers if they file an initial return on which the exemption is taken and the value of the tangible personal property is less than $25,000.[16]

Constitutional Provision for Amending the Constitution

The Legislature is authorized to propose amendments to the Constitution by joint resolution passed by three-fifths of the membership of each house.[17] The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State's office.[18] The proposed amendment must be approved by at least 60 percent of the votes cast in order to pass.[19]

Effect of Proposed Changes

This joint resolution proposes two amendments to the Constitution. The first amendment exempts the assessed value of a renewable energy source device, or a component thereof, from ad valorem taxation.

The second amendment authorizes the Legislature, by law, to prohibit a property appraiser from considering the installation of a renewable energy source device, or a component thereof, in the determination of property value for the purpose of ad valorem taxation. This expands the current constitutional provision by specifying that it applies also to a component of a renewable energy source device and by extending it to all real property, not just real property used for residential purposes. This provision is permissive and does not require the Legislature to enact legislation. Any change or improvement to real property for the purposes of resistance to wind damage remains limited to residential real property.

B. SECTION DIRECTORY:

As this legislation is a joint resolution proposing constitutional amendments, it does not contain bill sections. The joint resolution proposes to amend article VII, sections 3 and 4 of the State Constitution, to require the Legislature, by general law, to exempt the assessed value of a renewable energy source device or a component thereof from ad valorem taxation and to allow the Legislature, by general law, to prohibit the consideration of the installation of such device or component in determining the assessed value of residential and nonresidential real property for the purpose of ad valorem taxation. The joint resolution provides an effective date of January 1, 2017.

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[14] s. 193.062, F.S.; See also FLORIDA DEPARTMENT OF REVENUE, TANGIBLE PERSONAL PROPERTY, available at http://dor.myflorida.com/dor/property/tpp/ (last visited Nov. 13, 2015).
[15] s. 196.183(1), F.S.
[16] s. 196.183(3), F.S.
[17] FLA. CONST. art. XI, s. 1.
[18] FLA. CONST. art. XI, s. 5(a) provides that the amendment may be voted on at a special election held for that purpose more than 90 days from the filing with the Secretary of State if so provided in a law passed by three-fourths of the members of each chamber.
[19] FLA. CONST. art. XI, s. 5(e).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See *Fiscal Comments*.

2. Expenditures:

   See *Fiscal Comments*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The joint resolution will result in lower ad valorem tax expenses for taxpayers who make qualifying improvements to real property and may encourage the purchase of more renewable energy source devices throughout the state.

D. FISCAL COMMENTS:

The Revenue Estimating Conference agreed to an estimate of negative indeterminate or zero for HJR 193. If the proposed amendment does not pass, there is no impact; however, if it passes there will be an impact associated with the provisions related to tangible personal property which need no further implementing language. Assuming the legislature also passes HB 195 which includes real property, the combined school and non-school impact would reach a loss of $21.2 million in 2020-21, the fifth year of implementation, holding the 2014 statewide average property tax rates constant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This is not a general bill and is therefore not subject to the municipality/county mandates provision of article VII, section 18 of the Florida Constitution.

2. Other:

Article XI, section 1 of the Florida Constitution, provides for proposed changes to the Constitution by the Legislature:

SECTION 1: **Proposal by legislature.** – Amendment of a section or revision of one or more articles, or the whole, of this constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The full text of the joint resolution and the vote of each member voting shall be entered on the journal of each house.

If passed by the Legislature, the proposed amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state

records. The proposed amendment must be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published. Submission of a proposed amendment at an earlier special election requires the affirmative vote of three-fourths of the membership of each house of the Legislature and is limited to a single amendment or revision. Article XI, section 5(e) of the State Constitution, requires 60 percent voter approval for a proposed constitutional amendment to pass.

If the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election.[20]

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[20] FLA. CONST. art. XI, s. 5(e).

A bill to be entitled

An act relating to renewable energy source devices; amending s. 193.624, F.S.; revising the definition of the term "renewable energy source device" to include certain devices that store or use solar energy, wind energy, or energy derived from geothermal deposits to generate specified forms of energy; specifying a period during which a property appraiser is prohibited from considering an increase in the just value of real property used for residential purposes which is attributable to the installation of a renewable energy source device; prohibiting consideration by a property appraiser of an increase in the just value of real property used for any purpose which is attributable to the installation of a renewable energy source device or a component thereof on or after a specified date; creating s. 196.182, F.S.; exempting certain renewable energy source devices, or components thereof, from ad valorem taxation; reenacting ss. 193.155(4)(a) and 193.1554(6)(a), F.S., relating to homestead assessments and nonhomestead residential property assessments, respectively, to incorporate the amendment made to s. 193.624, F.S., in references thereto; providing a contingent effective date.

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

Section 1. Section 193.624, Florida Statutes, is amended to read:

193.624 Assessment of real ~~residential~~ property.—

(1) As used in this section, the term "renewable energy source device" means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

(a) Solar energy collectors, photovoltaic modules, and inverters.

(b) Storage tanks and other storage systems, excluding swimming pools used as storage tanks.

(c) Rockbeds.

(d) Thermostats and other control devices.

(e) Heat exchange devices.

(f) Pumps and fans.

(g) Roof ponds.

(h) Freestanding thermal containers.

(i) Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.

(j) Windmills and wind turbines.

(k) Wind-driven generators.

(l) Power conditioning and storage devices that store or use solar energy, wind energy, or energy derived from geothermal

deposits to generate electricity or mechanical forms of energy.

(m) Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

(2) In determining the assessed value of new and existing real property used for:

(a) Residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device between January 1, 2013, and December 31, 2016, may not be considered.

(b) ~~(3)~~ Any purpose, an increase in the just value of the property attributable ~~This section applies~~ to the installation of a renewable energy source device or a component thereof ~~installed~~ on or after January 1, 2017, may not be considered ~~January 1, 2013, to new and existing residential real property~~.

Section 2. Section 196.182, Florida Statutes, is created to read:

196.182 Exemption of renewable energy source devices and components.—A renewable energy source device, as defined in s. 193.624, or a component thereof, which is considered tangible personal property, is exempt from ad valorem taxation.

Section 3. For the purpose of incorporating the amendment made by this act to section 193.624, Florida Statutes, in a reference thereto, paragraph (a) of subsection (4) of section 193.155, Florida Statutes, is reenacted to read:

193.155 Homestead assessments.—Homestead property shall be

assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(4)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to homestead property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 4. For the purpose of incorporating the amendment made by this act to section 193.624, Florida Statutes, in a reference thereto, paragraph (a) of subsection (6) of section 193.1554, Florida Statutes, is reenacted to read:

193.1554 Assessment of nonhomestead residential property.—

(6)(a) Except as provided in paragraph (b) and s. 193.624, changes, additions, or improvements to nonhomestead residential property shall be assessed at just value as of the first January 1 after the changes, additions, or improvements are substantially completed.

Section 5. This act shall take effect January 1, 2017, if HJR 193, or a similar joint resolution having substantially the same specific intent and purpose, is approved by the electors at the general election to be held in November 2016 or at an earlier special election specifically authorized by law for that purpose.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 195 Renewable Energy Source Devices
SPONSOR(S): Rodrigues
TIED BILLS: HJR 193 **IDEN./SIM. BILLS:** SB 172

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Whittier	Keating
2) Finance & Tax Committee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

This bill implements HJR 193, which amends article VII, sections 3 and 4 of the Florida Constitution (Constitution) and creates article XII, section 34 of the Constitution. These amendments exempt the assessed value of a renewable energy source device, or a component thereof, from ad valorem taxation. They also authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device, or a component thereof, in determining the assessed value of real property for the purpose of ad valorem taxation.

The bill amends s. 193.624, F.S., to expand the definition of "renewable energy source device" to include devices for the storage of solar energy, wind energy, and energy derived from geothermal deposits. The bill also amends s. 193.624, F.S., to prohibit the consideration of the installation of a renewable energy source device, or a component thereof, from assessments of *all* real property, rather than just for residential property, beginning January 1, 2017.

The bill creates s. 196.182, F.S., to exempt a renewable energy source device, as defined in s. 193.624, F.S., or a component thereof, from ad valorem taxation.

The Revenue Estimating Conference estimates the bill will have a cash impact on local government property taxes beginning in Fiscal Year 2017-18 of -$17.1 million, growing to -$21.2 million by Fiscal Year 2020-21, assuming HJR 193 passes and holding the 2014 statewide average property tax rates constant.

The act will take effect January 1, 2017, if HJR 193 or a similar joint resolution having substantially the same specific intent and purpose is approved by the electors at the general election to be held in November 2016 or at an earlier special election specifically authorized by law for that purpose. The proposed amendment must be approved by at least 60 percent of the votes cast in order to pass.

The county/municipality mandates provision of article VII, section 18 of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing ad valorem tax bases compared to that which would exist under current law. This bill does not appear to qualify under any exemption or exception.

If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Constitution (Constitution) provides for finance and taxation, including local government ad valorem taxes on real property and tangible personal property,[1] assessment of property for tax purposes,[2] and exemptions to these taxes.[3]

Renewable Energy Property Tax Exemptions and Constitutional Amendment #3 (2008)

In 1980, Florida voters added the following authorization to article VII, section 3(d) of the Constitution:

> By general law and subject to conditions specified therein, there may be granted an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated, to the value fixed by general law not to exceed the original cost of the device, and for the period of time fixed by general law not to exceed ten years.

During the same year, based on the new constitutional authority, the Legislature approved a property tax exemption for real property on which a renewable energy source device is installed and is being operated.[4] However, the exemption expired after 10 years, as provided in the Constitution. Specifically, the exemption period authorized in statute was from January 1, 1980, through December 31, 1990. Therefore, if an exemption was granted in December 1990, the exemption terminated in December 2000. The law required that the exemption could be no more than the lesser of the following:

- The assessed value of the property less any other exemptions applicable under the chapter;
- The original cost of the device, including the installation costs, but excluding the cost of replacing previously existing property removed or improved in the course of the installation; or
- Eight percent of the assessed value of the property immediately following the installation.[5]

In December 2000, the last of these exemptions expired.

During the 2008 Legislative Session, HB 7135 (ch. 2008-227, L.O.F.) was enacted, removing the expiration date of the property tax exemption, thereby allowing property owners to once again apply for the exemption, effective January 1, 2009. The period of each exemption, however, remained at 10 years. The bill also revised the options for calculating the amount of the exemption for properties with renewable energy source devices by limiting the exemption to the amount of the original cost of the device, including the installation cost, but not including the cost of replacing previously existing property.

In the November 2008 General Election, Florida voters approved a constitutional amendment placed on the ballot by the Taxation and Budget Reform Commission, adding the following language to article VII, section 4 of the Florida Constitution:

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[1] FLA. CONST. art. VII, s. 9.
[2] FLA. CONST. art. VII, s. 4.
[3] FLA. CONST. art. VII, s. 3.
[4] ss. 196.175 and 196.012(14), F.S. (2000)
[5] *Id.*

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes: [6]
(1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
(2) The installation of a renewable energy source device.

The constitutional amendment only addressed residential property.

The amendment also repealed the constitutional authority for the Legislature to grant an ad valorem tax exemption to a renewable energy source device and to real property on which such device is installed and operated. This repealed language had provided the constitutional basis for the legislation passed in 1980 and 2008; thereby nullifying the property tax exemption that the Legislature had just passed.

In 2013, the Legislature created s. 193.624, F.S., which provides that in determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered. The law applies to the installation of a renewable energy source device installed on or after January 1, 2013, to new and existing residential real property. The wind mitigation portion of the constitutional amendment for residential properties was not included in the law.

"Renewable energy source devices" means any of the following equipment that collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:

- Solar energy collectors, photovoltaic modules, and inverters.
- Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
- Rockbeds.
- Thermostats and other control devices.
- Heat exchange devices.
- Pumps and fans.
- Roof ponds.
- Freestanding thermal containers.
- Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, such equipment does not include conventional backup systems of any type.
- Windmills and wind turbines.
- Wind-driven generators.
- Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
- Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.[7]

Property Valuation and Property Appraisals

Article VII, section 4 of the Constitution, provides that all property, with some exceptions, is to be assessed at "just value." Florida courts define "just value" as the estimated fair market value of the property. The Constitution requires property appraisers to establish the just value of every parcel of real property as of January 1 each year.

"Assessed value of property"[8] is defined as an annual determination of the following:

[6] The 2008 constitutional amendment is permissive and does not *require* the Legislature to enact legislation.
[7] s. 193.624(1), F.S.
[8] s. 192.001(2), F.S.

- The just or fair market value of an item or property;
- The value of a homestead property after application of the "Save Our Homes" assessment limitation;[9] or
- The value of nonhomestead property after application of a 10 percent cap.[10, 11]

Section 193.011, F.S., lists the following factors to be taken into consideration when a property appraiser is determining just valuation:

(1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

(3) The location of said property;

(4) The quantity or size of said property;

(5) The cost of said property and the present replacement value of any improvements thereon;

(6) The condition of said property;

(7) The income from said property; and

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

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[9] The "Save Our Homes" amendment to the Florida Constitution was approved by voters in 1992. This amendment limits annual assessment increases to the lower of: 3 percent of the assessment for the prior year or the change in the Consumer Price Index (CPI) for all urban consumers. See Art. VII, s. 4(d)(1), Fla. Const.

[10] On January 29, 2008, Florida voters approved a constitutional amendment changing property taxation provisions. Some of the changes provided that the property tax assessment of certain nonhomestead property cannot increase by more than 10 percent per year, so long as ownership of the property does not change. The limitation does not apply to taxes levied by school districts.

[11] "Assessed value" is also the classified use value of agricultural or other special classes of property that are valued based on their current "classified" use rather than on market value.

Ad Valorem Tax

"Ad valorem tax" means a tax based upon the assessed value of property. The term "property tax" is used interchangeably with the term "ad valorem tax."[12] Local governments may levy ad valorem tax assessments on real property and tangible personal property. "Real property" is defined as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably.[13] "Tangible personal property" means all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are excluded.[14] Anyone who owns tangible personal property on January 1 of each year and who has a proprietorship, partnership, or corporation, or is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.[15] Property owners who lease, lend, or rent property must also file. Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to $25,000 of assessed value. A single return must be filed for each site in the county where the owner of tangible personal property transacts business.[16]

The requirement to file an annual tangible personal property return is waived for taxpayers if they file an initial return on which the exemption is taken and the value of the tangible personal property is less than $25,000.[17]

Tied House Joint Resolution Amending the Constitution (HJR 193)

The Constitution provides for finance and taxation, including local government ad valorem taxes on real property and tangible personal property,[18] assessment of property for tax purposes,[19] and exemptions to these taxes.[20]
Article VII, section 4 of the Constitution specifically provides the following:

> (i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:
> (1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.
> (2) The installation of a renewable energy source device.

The constitutional provision only addresses residential property and does not *require* the Legislature to enact legislation; however, the Legislature implemented this prohibition in s. 193.624, F.S., during the 2013 legislative session.

This bill is tied to HJR 193, which proposes two amendments to the Constitution. Both relate to the inclusion of the assessed value of a renewable energy source device in determining ad valorem taxes.

The first exempts the assessed value of a renewable energy source device, or a component thereof, which is subject to tangible personal property tax, from ad valorem taxation.

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[12] s. 192.001(1), F.S.
[13] s. 192.001(12), F.S.
[14] s. 192.001(11)(d), F.S.
[15] s. 193.062, F.S.; See also FLORIDA DEPARTMENT OF REVENUE, TANGIBLE PERSONAL PROPERTY, available at http://dor.myflorida.com/dor/property/tpp/ (last visited Nov. 13, 2015).
[16] s. 196.183(1), F.S.
[17] s. 196.183(3), F.S.
[18] FLA. CONST. art. VII, s. 9.
[19] FLA. CONST. art. VII, s. 4.
[20] FLA. CONST. art. VII, s. 3.

The second authorizes the Legislature, by law, to prohibit a property appraiser from considering the installation of renewable energy source devices and related components in determining property value for the purpose of ad valorem taxation. This proposed amendment expands the 2008 constitutional amendment by specifying that the provision applies to the renewable energy source device, *or a component thereof,* and by extending the exemption to all real property, not just real property used for residential purposes. The provision is permissive and does not require the Legislature to enact legislation. Any change or improvement to real property for the purposes of resistance to wind damage remains limited to residential real property.

Effect of Proposed Changes

The bill implements HJR 193, which amends article VII, sections 3 and 4 of the Florida Constitution and creates article XII, section 34 of the Florida Constitution. These amendments exempt the assessed value of a renewable energy source device, or a component thereof, from ad valorem taxation. They also authorize the Legislature, through general law, to prohibit the consideration of the installation of a renewable energy source device, or a component thereof,[21] in determining the assessed value of all real property (not just residential) for the purpose of ad valorem taxation, as of January 1, 2017. The provision is permissive and does not require the Legislature to enact legislation. Any change or improvement to real property for the purposes of resistance to wind damage remains limited to residential real property.

Specifically, the bill creates s. 196.182, F.S., to exempt a renewable energy source device, or any component thereof from ad valorem taxation. It amends s. 193.624, F.S., to prohibit the consideration of an increase in the just value of a property attributable to the installation of a renewable energy source device, or a component thereof, in determining assessments of *all* real property, rather than just for residential property, beginning January 1, 2017. The bill clarifies that the provision applies to new and existing real property.

The bill expands the definition of "renewable energy source device" in s. 193.624, F.S., to include power conditioning and storage devices that store or use solar energy (in addition to wind energy) or energy derived from geothermal deposits to generate electricity or mechanical forms of energy.

B. SECTION DIRECTORY:

Section 1. Amends s. 193.624, F.S., relating to assessments of real property.

Section 2. Creates s. 196.182, F.S., exempting a renewable energy source device or any component thereof from ad valorem taxation.

Section 3. Reenacts s. 193.155, F.S., relating to homestead assessments.

Section 4. Reenacts s. 193.1554, F.S., relating to nonhomestead residential property assessments.

Section 5. Provides an effective date of January 1, 2017, if HJR 193 or a similar joint resolution having substantially the same specific intent and purpose, is approved by the electors at the November 2016 general election or at an earlier special election specifically authorized by law for that purpose.

[21] Although this is not defined in the bill or the joint resolution, it may be referring to battery backups for photovoltaic systems.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See *Fiscal Comments.*

2. Expenditures:

   See *Fiscal Comments.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will result in lower ad valorem tax expenses for taxpayers who make qualifying improvements to real property and may encourage the purchase of more renewable energy source devices throughout the state.

D. FISCAL COMMENTS:

The Revenue Estimating Conference estimates the bill will have a cash impact on local government property taxes beginning in Fiscal Year 2017-18 of -$17.1 million, growing to -$21.2 million by Fiscal Year 2020-21, assuming HJR 193 passes and holding the 2014 statewide average property tax rates constant.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of article VII, section 18 of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by reducing ad valorem tax bases compared to that which would exist under current law. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

   Although this bill would be implementing constitutional amendments adopted by Florida voters, the amendment regarding the prohibition of adding to property value based on the installation of a renewable energy source device, or component thereof, is permissive and only authorizes, not requires the Legislature to act. The amendment exempting renewable energy source devices, or components thereof, from ad valorem taxation is not permissive.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to utility projects; providing a short title; defining terms; 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; specifying application requirements; requiring a successor entity of a local agency to assume and perform the obligations of the local agency with respect to the financing of a utility project; providing procedures for local agencies to use when applying to finance a utility project using utility cost containment bonds; authorizing an authority to issue utility cost containment bonds for specified purposes related to utility projects; authorizing an authority to form alternate entities to finance utility projects; requiring the governing body of the authority to adopt a financing resolution and impose a utility project charge on customers of a publicly owned utility as a condition of utility project financing; specifying required and optional provisions of the financing resolution; specifying powers of the authority; requiring the local agency or its publicly owned utility to assist the authority in the establishment or adjustment of the utility project charge; requiring that customers of the public utility specified in the

financing resolution pay the utility project charge; providing for adjustment of the utility project charge; establishing ownership of the revenues of the utility project charge; requiring the local agency or its publicly owned utility to collect the utility project charge; conditioning a customer's receipt of public utility services on payment of the utility project charge; authorizing a local agency or its publicly owned utility to use available remedies to enforce collection of the utility project charge; providing that the pledge of the utility project charge to secure payment of bonds issued to finance the utility project is irrevocable and cannot be reduced or impaired except under certain conditions; providing that a utility project charge constitutes utility project property; providing that utility project property is subject to a lien to secure payment of costs relating to utility cost containment bonds; establishing payment priorities for the use of revenues of the utility project property; providing for the issuance and validation of utility cost containment bonds; securing the payment of utility cost containment bonds and related costs; providing that utility cost containment bonds do not obligate the state or any political subdivision and are not backed by their full faith and credit and taxing

power; requiring that certain disclosures be printed on utility cost containment bonds; providing that financing costs related to utility cost containment bonds are an obligation of the authority only; providing limitations on the state's ability to alter financing costs or utility project property under certain circumstances; prohibiting an authority with outstanding payment obligations on utility cost containment bonds from becoming a debtor under certain federal or state laws; providing for construction; endowing public entities with certain powers; providing an effective date.

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

Section 1. Utility Cost Containment Bond Act.—

(1) SHORT TITLE.—This section may be cited as the "Utility Cost Containment Bond Act."

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

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

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

1. 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;

2. 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;

3. Finance charges;

4. Interest, as determined by the authority;

5. Provisions for working capital and debt service reserves;

6. Expenses for extensions, enlargements, additions, replacements, renovations, and improvements;

7. Expenses for architectural, engineering, financial, accounting, and legal services, plans, specifications, estimates, and administration; or

8. 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.

(c) "Customer" means a person receiving water or wastewater service from a publicly owned utility.

(d) "Finance" or "financing" includes refinancing.

(e) "Financing cost" means:

1. Interest and redemption premiums that are payable on utility cost containment bonds;

2. 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;

3. The cost related to issuing or servicing utility cost containment bonds, including any payment under an interest rate swap agreement and any type of fee;

4. 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;

5. Any coverage charges; or

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

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

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

(h) "Local agency" means a member of the authority, or an agency or subdivision of that member, which 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.

(i) "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, Florida Statutes, Internet access services, or information services.

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

(k) "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:

1. Bond purchase agreements;

2. Bonds acquired by the authority;

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

4. Utility projects financed or refinanced by the authority;

5. Grants and other sources of income;

6. Moneys paid by a local agency;

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

8. 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.

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

(m) "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 within or outside this state which is used in connection with the operations of a publicly owned utility.

(n) "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 under subsection (4). The term includes any adjustments to the utility project charge made under subsection (5).

(o) "Utility project property" means the property right created pursuant to subsection (6). The term does not include

any interest in a customer's real or personal property but includes the right, title, and interest of an authority in any of the following:

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

2. 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; or

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

(3) UTILITY PROJECTS.—

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

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

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

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

3. Based on the best information available to the governing body, 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 were financed with bonds payable from revenues of the publicly owned utility.

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

(d) 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, references in this section to the local agency or to its publicly owned utility must be to the successor entity. The successor entity shall assume and perform all obligations of the local agency and its publicly owned utility required by this

section and shall assume the servicing agreement required under subsection (4) while the utility cost containment bonds remain outstanding.

(4) FINANCING UTILITY PROJECTS.—

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

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

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

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

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

(b) The governing body of an authority that is financing

the costs of a utility project shall adopt a financing resolution and shall impose a utility project charge as described in subsection (5). All provisions of a financing resolution adopted pursuant to this section are binding on the authority.

1. The financing resolution must:

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

b. Require 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 to 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;

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

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

2. The authority may require in the financing resolution that, in the event of a default by the local agency or its publicly owned utility with respect to revenues from the utility project property, the authority, upon application by the beneficiaries of the statutory lien as set forth in subsection (6), shall order the sequestration and payment to the beneficiaries of revenues arising from utility project property. This subparagraph does not limit any other remedies available to the beneficiaries by reason of default.

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

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

(5) UTILITY PROJECT CHARGE.—

(a) The authority shall impose a sufficient utility project charge, based on estimates of water or wastewater service usage, to ensure timely payment of all financing costs

with respect to utility cost containment bonds. The local agency or its publicly owned utility shall provide the authority with information concerning the publicly owned utility which may be required by the authority in establishing the utility project charge.

(b) The utility project charge is a nonbypassable charge to all present and future customers of the publicly owned utility in the class or classes of customers specified in the financing resolution upon its adoption. If the regulatory structure for the water or wastewater industry changes in a manner that authorizes a customer to choose to take service from an alternative supplier and the customer chooses an alternative supplier, the customer remains liable for paying the utility project charge if the customer continues to receive any service from the publicly owned utility for the transmission, distribution, processing, delivery, or metering of the underlying water or wastewater service.

(c) The authority shall determine at least annually and at such additional intervals as provided in the financing resolution and documents related to the applicable utility cost containment bonds whether adjustments to the utility project charge are required. The authority shall use the adjustment to correct for any overcollection or undercollection of financing costs from the utility project charge or to make any other adjustment necessary to ensure the timely payment of the financing costs of the utility cost containment bonds, including

adjustment of the utility project charge to pay any debt service coverage requirement for the utility cost containment bonds. The local agency or its publicly owned utility shall provide the authority with information concerning the publicly owned utility which may be required by the authority in adjusting the utility project charge.

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

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

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

(e) The local agency or its publicly owned utility shall act as a servicing agent for collecting the utility project charge throughout the duration of the servicing agreement required by the financing resolution. The local agency or its publicly owned utility shall hold the money collected in trust for the exclusive benefit of the persons entitled to have the

financing costs paid from the utility project charge, and the money does not lose its designation as revenues of the authority by virtue of possession by the local agency or its publicly owned utility.

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

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

(6) UTILITY PROJECT PROPERTY.—

(a) A utility project charge constitutes utility project property on the effective date of the financing resolution authorizing such utility project charge. Utility project property constitutes property, including contracts for securing utility cost containment bonds, regardless of whether the revenues and proceeds arising with respect to the utility project property have accrued. Utility project property shall

continuously exist as property for all purposes with all of the rights and privileges of this section through the end of 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.

(b) 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.

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

2. 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 any other person.

3. 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.

4. 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.

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

(7) UTILITY COST CONTAINMENT BONDS.—

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

(b) Utility cost containment bonds shall be issued as set forth in this section and s. 163.01(7)(g)8., Florida Statutes, and may be validated pursuant to s. 163.01(7)(g)9., Florida Statutes.

(c) The authority shall pledge the utility project property as security for the payment of the utility cost containment bonds. All rights of an authority with respect to

utility project property pledged as security for the payment of utility cost containment bonds shall be for the benefit of, and enforceable by, the beneficiaries of the pledge to the extent provided in the financing documents relating to the utility cost containment bonds.

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

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

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

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

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

(d) Utility cost containment bonds shall be 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 utility cost containment bonds and any additional security or credit enhancement specified in the documents relating to the utility cost containment bonds. If, pursuant to subsection (4), the authority is financing the project through a single-purpose limited liability company, the utility cost containment bonds shall be payable from, and secured by, a pledge of amounts paid by the company to the authority from the applicable utility project property. This paragraph is the exclusive method of perfecting a pledge of utility project property by the company securing the payment of financing costs under any agreement of the company in connection with the issuance of utility cost containment bonds.

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

"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."

(f) Notwithstanding any other law or this section, a

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

(g) Subject to the terms of any pledge document created under this section, 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.

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

(i) Except as otherwise provided in this section with respect to adjustments to a utility project charge, the recovery of the financing costs for the utility cost containment bonds from the utility project charge is irrevocable, and the authority does not have the power, by rescinding, altering, or

amending the applicable financing resolution, to revalue or revise for ratemaking purposes the financing costs of utility cost containment bonds; to determine that the financing costs for the related utility cost containment bonds or the utility project charge is unjust or unreasonable; or to in any way, either directly or indirectly, reduce or impair the value of utility project property that includes the utility project charge. The amount of revenues arising with respect to the financing costs for the related utility cost containment bonds or the utility project charge is not subject to reduction, impairment, postponement, or termination for any reason until all financing costs to be paid from the utility project charge are fully met and discharged.

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

(8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other

law, an authority that issued utility cost containment bonds may not, and a governmental officer or organization may not authorize the authority to, 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 utility cost containment bonds.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 347 Utility Projects
SPONSOR(S): Sprowls
TIED BILLS: **IDEN./SIM. BILLS:** SB 324

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Keating CK	Keating CK
2) Finance & Tax Committee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The bill establishes a new financing mechanism – "Utility Cost Containment Bonds" – available to an intergovernmental authority to finance or refinance, on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity (including the authority itself), projects related to water or wastewater service. The creation of this financing mechanism, referred to as securitization, 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 utility projects for these entities.

In summary, 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 on behalf of the local government receiving financing for an eligible project.
- The intergovernmental utility authority and the local government enter into a servicing agreement under which the local government collects the charge.
- The moneys from the charge are transferred to the intergovernmental utility authority and used to secure bonds issued for the benefit of the local government.
- The moneys collected from the charge are 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 intergovernmental utility authority may not file bankruptcy while any of the bonds are outstanding.

The Florida Governmental Utility Authority is the only intergovernmental authority that currently meets the criteria to provide financing under the bill. FGUA's current purpose is to own and operate a public utility system for the provision of water and wastewater service.

The bill does not impact state government revenues or expenditures. The bill may reduce local government expenditures by reducing financing costs for water or wastewater utility projects by a municipality, county, special district, public corporation, regional water authority, or other governmental entity sponsoring or refinancing a utility project. The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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 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.

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[1] s. 153.03(1) and (2), F.S.
[2] s. 153.02(9), F.S.
[3] s. 153.02(10), F.S.
[4] s. 153.02(11), F.S.
[5] FLA. CONST. art. VII, s. 12 (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] s. 153.07, F.S.
[7] s. 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.
[8] See Footnote 5.
[9] s. 166.101, F.S., et seq.
[10] ss. 180.06 and 180.08, F.S.

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 government[12] 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 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"). Section 163.01(7)(g), F.S., 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.

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 counties[21] and municipalities[22] are fully

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[11] s. 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] s. 218.37, F.S.
[14] s. 218.38, F.S. DBF is authorized only to collect information concerning these bonds; it does not exercise any substantive authority to review or approve these transactions.
[15] s. 163.01(2), F.S.
[16] s. 163.01(5), F.S.
[17] s. 163.01(2), F.S.
[18] s. 163.01(7)(b), F.S.
[19] s. 163.01(7)(d), F.S.
[20] s. 163.01(7)(g), F.S.
[21] s. 125.01, F.S.

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.[23]

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 was created by interlocal agreement for the purpose of acquiring, owning, improving, and operating water and wastewater facilities. FGUA owns and operates over 80 water and wastewater utility systems across 14 counties: Alachua, Citrus, Collier, Hardee, Hillsborough, Lake, Lee, Marion, Orange, Pasco, Polk, Putnam, Seminole, and Volusia counties have systems in FGUA.[24] FGUA's governing board is comprised of seven members representing Citrus, DeSoto, Hendry, Lee, Marion, Pasco, and Polk counties.[25] Each board member is a county employee appointed by their local government.[26]

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 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.[27] 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 to replenish storm reserve funds. This mechanism has been implemented in only one instance.[28]

Effect of Proposed Changes

The bill establishes a new mechanism – "Utility Cost Containment Bonds" – available to an intergovernmental authority to finance, on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity (including the IGUA itself), projects related to water or wastewater service. The creation of this financing mechanism, referred to as securitization, 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.

In summary, 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 on behalf of the local government receiving financing for an eligible project.
- The intergovernmental utility authority and the local government enter into a servicing agreement under which the local government collects the charge.

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[22] s. 166.021, F.S.
[23] s. 163.01(7)(g)7., F.S.
[24] http://fgua.com/about-us/history/ and, http://fgua.com/systems/ (last accessed November 12, 2015).
[25] http://fgua.com/about-us/meet-the-board/ (last accessed November 12, 2015).
[26] *Id.*
[27] s. 366.8260, F.S.
[28] Docket No. 060038-EI, Florida Public Service Commission.

- The moneys from the charge are transferred to the intergovernmental utility authority and used to secure bonds issued for the benefit of the local government.
- The moneys collected from the charge are 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 intergovernmental utility authority may not file for bankruptcy while any of the bonds are outstanding.

The Florida Governmental Utility Authority 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.

Definitions

The bill provides the following definitions:

- **"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.[29]

- **"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.
  - 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.

- **"Finance" or "financing"** includes refinancing.

- **"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 type 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.

[29] Only the Florida Governmental Utility Authority currently meets this definition.

- Any coverage charges.
- The funding of one or more reserve accounts related to utility cost containment bonds.

- **"Financing resolution"** means a resolution adopted by the governing body of an authority that provides for the financing or refinancing of a utility project with utility cost containment bonds and that imposes a utility project charge in connection with the utility cost containment bonds. A financing resolution may be separate from a resolution authorizing the issuance of the bonds.

- **"Governing body"** means the body that governs a local agency.

- **"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.[30]

- **"Public utility services"** means water or wastewater services provided by a publicly owned utility. The term does not include Internet or cable services.

- **"Publicly owned utility"** means a utility furnishing retail or wholesale water or wastewater services that is owned and operated by a local agency. The term includes any successor to the powers and functions of such a utility.

- **"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 cost containment bonds"** means bonds, notes, commercial paper, variable rate securities, and any other evidences of indebtedness issued by an authority, the proceeds of which are used directly or indirectly to pay or reimburse a local agency or its publicly owned utility for the costs of a utility project and which are secured by a pledge of, and are payable from, utility project property.

- **"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.

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[30] 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. See Comments section for further discussion.

- **"Utility project property"** means the property right created by the bill, including 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.
  - All rights to obtain adjustments to the utility project charge pursuant to the bill.

  The term does not include any interest in a customer's real or personal property.

Local Agency Authority

The bill provides that a local agency that owns and operates a publicly owned utility 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.

Before applying, the governing body of the local agency must determine the following:

- The project to be financed is a utility project.[31]
- 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.

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.

Powers of the Intergovernmental Utility Authority

In addition to its existing powers under s. 163.01(7)(g), F.S., the bill provides that an intergovernmental utility authority may 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.

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:

[31] This determination is deemed "final and conclusive" by the bill.

- 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 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.

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.

Utility Project Charges

The bill requires the authority to 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 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 the regulatory structure for the water or wastewater industry changes in a manner that allows a customer to choose to take service from an alternative supplier and the customer chooses an alternative supplier, the customer remains liable for payment of the utility project charge if the customer continues to receive any service from the publicly owned utility for the transmission, distribution, delivery, or metering of the underlying water or wastewater service.

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 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. The bill authorizes the local agency or its publicly owned utility to use its established collection policies and remedies under law to enforce collection of the charge. 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 bill provides that the utility project charge constitutes utility project property when a financing resolution authorizing the charge becomes effective. As defined by the bill, 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 bill provides that 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 the 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.
- 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. The bill provides that 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.

The bill provides that 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

The bill provides that, 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, no governmental officer or organization may 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.

B. SECTION DIRECTORY:

Section 1. Creates an unnumbered section of law to be cited as the Utility Cost Containment Bond Act.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. 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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

D. FISCAL COMMENTS:

The creation of the utility cost containment bond financing mechanism is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate on bonds issued to fund eligible local agency utility projects. The lower rate could result in lower financing costs for these projects.

Because the intergovernmental utility authority (or a single purpose limited liability company created by the authority or a new single-purpose entity formed by interlocal agreement) is the obligor on the bonds, the debt from an issuance of utility cost containment bonds will not be reflected on the local agency or utility's balance sheet. Also, revenues from the utility project charge and expenses for debt service on the bonds will not be reflected on the local agency or utility's financial statements.

A local agency that uses this financing mechanism may have less incentive to carefully control operating expenses of its public utility, because bondholders are paid from the separate fee regardless of the utility's financial condition. Also, the mechanism may encourage the issuance of additional debt because the debt is paid from the revenues of the authority regardless of any change in the utility's operating expenses.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Financing of Projects of the Intergovernmental Utility Authority

The bill requires interaction between the local agency and the intergovernmental utility authority in certain instances, including the requirement that a local agency apply to the authority for financing and the requirement that the authority enter into a servicing agreement with the local agency. However, as defined in the bill, it appears that an intergovernmental utility authority could seek financing itself as a "local agency," creating a situation in which the authority must seek approval from itself and enter into an agreement with itself. The bill authorizes the authority to form a single-purpose limited liability company or, together with two or more of its members, to create a new single-purpose entity by local agreement to perform the intergovernmental utility authority duties. If the authority creates one of these entities, it may avoid a situation in which it must apply to itself for financing or enter into a servicing agreement with itself. However, the authority may have a role in the governance of either entity.

Establishment of Utility Project Charges

The bill provides that the governing body of an authority that is financing the costs of a utility project must adopt a financing resolution and impose a utility project charge, and the decisions of the authority are final and conclusive. A local agency that uses this financing mechanism is not required to be or to become a member of the authority. Though the authority may require and utilize information from the local agency or its publicly owned utility in setting utility project charges and rate classes, a local agency that does not become a member of the authority does not appear to have a formal role in the adoption of a financing resolution setting the charge and rate classes. In turn, the customers of those local agencies' public utilities may lack representation in this rate-setting process.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to water and wastewater; creating 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 allocation and reallocation of bonds for water and wastewater infrastructure projects; amending s. 212.08, F.S.; extending specified tax exemptions to certain investor-owned water and wastewater utilities; amending s. 367.022, F.S.; exempting from regulation by the Florida Public Service Commission a person who resells water service to certain tenants or residents up to a specified percentage or cost; amending s. 367.081, F.S.; authorizing the commission to create a utility reserve fund; requiring the commission to adopt rules to govern the implementation, management, and use of the fund; establishing criteria for adjusted rates; specifying expense items that may be the basis for an automatic increase or decrease of a utility's rates; authorizing the commission to establish by rule additional specified expense items; restricting a utility from recovering more than a certain percentage of reasonable rate case expenses; amending s. 367.0814, F.S.; authorizing the commission to award rate case expenses to recover attorney fees or fees of

other outside consultants in certain circumstances; requiring the commission to adopt rules by a certain date; amending s. 367.0816, F.S.; prohibiting a utility from recovering certain expenses for more than one rate case at a time; amending s. 367.111, F.S.; authorizing the commission to review water quality and wastewater service under certain circumstances; amending s. 403.8532, F.S.; 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; removing current restrictions on such activities; amending s. 367.171, F.S.; making technical changes; providing an effective date.

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

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

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

Section 2. Paragraph (ooo) is added to subsection (7) of

section 212.08, Florida Statutes, to read:

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

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

(ooo) Investor-owned water and wastewater utilities.—Sales

or leases to an investor-owned water or wastewater utility owned or operated by a Florida corporation are exempt from the tax imposed by this chapter if the sole or primary function of the corporation is to construct, maintain, or operate a water or wastewater system in this state and if the goods or services purchased or leased are used in this state.

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

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

(9) 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 9 percent of the actual cost of service.

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

367.081 Rates; procedure for fixing and changing.—

(2)

(c) In establishing rates for a utility, the commission may create a utility reserve fund for infrastructure repair and

replacement for a utility for existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service, 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 commission shall adopt rules to govern the implementation, management, and use of the fund, including, but not limited to, rules related to expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for commission authorization before disbursements are made from the fund.

(4)

(b) The approved rates of any utility ~~which receives all or any portion of its utility service from a governmental authority or from a water or wastewater utility regulated by the commission and which redistributes that service to its utility customers~~ shall be automatically increased or decreased without hearing, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the utility's costs for any specified expense item ~~rates charged by the governmental authority or other utility~~ have changed. ~~The approved rates of any utility which is subject to an increase or decrease in the rates or fees that it is charged for electric power, the amount of ad valorem taxes assessed against its used and useful property, the fees charged by the Department of Environmental Protection in connection with the National~~

~~Pollutant Discharge Elimination System Program, or the regulatory assessment fees imposed upon it by the commission shall be increased or decreased by the utility, without action by the commission, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the rates charged by the supplier of the electric power or the taxes imposed by the governmental authority, or the regulatory assessment fees imposed upon it by the commission have changed. The new rates authorized shall reflect the amount of the change of the ad valorem taxes or rates imposed upon the utility by the governmental authority, other utility, or supplier of electric power, or the regulatory assessment fees imposed upon it by the commission. The approved rates of any utility shall be automatically increased, without hearing, upon verified notice to the commission 45 days prior to implementation of the increase that costs have been incurred for water quality or wastewater quality testing required by the Department of Environmental Protection.~~

1. The new rates authorized shall reflect, on an amortized or annual basis, as appropriate, the cost of~~,~~ or the amount of change in the cost of~~,~~ the specified expense item ~~required water quality or wastewater quality testing performed by laboratories approved by the Department of Environmental Protection for that purpose~~. The new rates, however, shall not reflect the costs of any specified expense item ~~required water quality or wastewater quality testing~~ already included in a utility's rates. Specified

expense items that are eligible for automatic increase or decrease of a utility's rates include, but are not limited to:

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

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

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

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

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

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

g. The fees charged for wastewater biosolids disposal.

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

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

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

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

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

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

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

(7) The commission shall determine the reasonableness of rate case expenses and shall disallow all rate case expenses determined to be unreasonable. No rate case expense determined to be unreasonable shall be paid by a consumer. In determining the reasonable level of rate case expense, the commission shall consider the extent to which a utility has utilized or failed to

utilize ~~the provisions of~~ paragraph (4)(a) or paragraph (4)(b) and such other criteria as it may establish by rule. A utility may recover only up to 50 percent of rate case expenses that are determined to be reasonable.

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

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

(3) The provisions of s. 367.081(1), (2)(a), and (3) shall apply in determining the utility's rates and charges. However, the commission may not award rate case expenses to recover 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 pursuant to this section, unless the Office of Public Counsel or interested parties have intervened. The commission may award rate case expenses for attorney fees or fees of other outside consultants if such fees are incurred for the purpose of providing consulting or legal services to the utility after the initial staff report is made available to customers and the utility. If there is a protest or appeal by a party other than the utility, the commission may award rate case expenses to the utility for attorney fees or fees of other outside consultants for costs incurred after the protest or appeal. By December 31, 2016, the commission must adopt rules to administer this subsection.

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

367.0816 Recovery of rate case expenses.—

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

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

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

367.111 Service.—

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

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

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

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

(3) The department may make, or request that the corporation make, loans, grants, and deposits to community water systems; for-profit, privately owned, or investor-owned water systems; nonprofit, transient, noncommunity water systems; ~~,~~ and nonprofit, nontransient, noncommunity water systems to assist them in planning, designing, and constructing public water systems~~, unless such public water systems are for-profit privately owned or investor-owned systems that regularly serve 1,500 service connections or more within a single certified or franchised area. However, a for-profit privately owned or investor-owned public water system that regularly serves 1,500 service connections or more within a single certified or franchised area may qualify for a loan only if the proposed project will result in the consolidation of two or more public water systems~~. The department may provide loan guarantees, purchase loan insurance, and refinance local debt through the issue of new loans for projects approved by the department. Public water systems may borrow funds made available pursuant to

this section and may pledge any revenues or other adequate security available to them to repay any funds borrowed.

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

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

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

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

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

367.171 Effectiveness of this chapter.—

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

proceed as though the county or agency is the commission.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 491 Water and Wastewater
SPONSOR(S): Smith
TIED BILLS: **IDEN./SIM. BILLS:** SB 534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Keating CK	Keating CK
2) Finance & Tax Committee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

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. Consistent with the law, the Study Committee submitted a report containing its recommendations to the Speaker of the House, the President of the Senate, and the Governor, on February 15, 2013. This bill adopts several of the Study Committee's recommendations for legislative action. In particular, the bill:

- 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) owned or operated by a Florida corporation, 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 plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.
- Authorizes the PSC, during a rate case, to create an individual IOU reserve fund to be used for certain infrastructure repair and replacement projects, with disbursement subject to approval by the PSC.
- 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:
    - To no more than 50 percent of the amount of rate case expense deemed reasonable by the PSC;
    - For more than one rate case at any given time; and
    - Where the rate case expense is incurred to prepare or file a staff-assisted rate case in which no party intervenes.
- 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.

The Revenue Estimating Conference, on October 28, 2015, estimated that the sales tax exemption in the bill will have a negative impact on state revenues of $2.7 million in FY 2016-17 and $3.0 million in each fiscal year from FY 2017-18 through FY 2020-21. It also estimated that the exemption will have a recurring negative impact on local government revenues of $0.7 million annually beginning in FY 2016-17. The bill appears to have an insignificant impact on state government expenditures and no impact on local government expenditures.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Water and Wastewater Industry Overview

In various areas throughout Florida, water and wastewater services are provided through privately-owned and operated water and/or 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 or Commission) to regulate those utilities.[1] Regardless of whether the county has opted to regulate IOUs, the PSC has jurisdiction over all water and wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.[2] Currently, the PSC has jurisdiction over 146 water and/or 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]

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

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[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.
[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

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 Speaker of the House, the President of the Senate, and the Governor, on February 15, 2013.

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 State Revolving Fund (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 as identified by the PSC; and
    - Directing the Division of Bond Finance to review the allocation of private activity bonds (PABs) 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/or 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.

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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/.

- 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% or more of the net bond proceeds must be used for one of the qualified purposes listed in ss. 142 through 145 and 1394 of the Internal Revenue Code (the Code). These qualified purposes include facilities used to furnish water or sewer services. The 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 volume cap.[10]

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 Code.[11] This amount is allocated on January 1 of each year as follows:[12]

- 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[13] 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.
- 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.
- 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 ultimately utilized for water and sewer projects in Florida.[14]

Sales and Use Tax

In general, sales and leases to water IOUs and wastewater IOUs are subject to the state sales and use tax, as specified in s. 212.05, F.S.[15] Florida law provides an exemption for sales made to political subdivisions[16] (which may include water and wastewater utilities owned and operated by governmental entities) and for sales and leases to non-profit water systems.[17]

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[10] *Tax-Exempt Private Activity Bonds, Compliance Guide*, Internal Revenue Service Publication 4078, Version 09-2005.
[11] s. 159.804, F.S.
[12] *Id.*
[13] These individual counties and groups of counties are identified in s. 159.804(2)(b), F.S.
[14] *Study Committee Report*, p. 43.
[15] But see s. 212.051, F.S., which provides that "sales, use, or privilege taxes shall not be collected with respect to any facility, device, fixture, equipment, machinery, specialty chemical, or bioaugmentation product used primarily for the control or abatement of pollution or contaminants in manufacturing, processing, compounding, or producing for sale items of tangible personal property at a fixed location, or any structure, machinery, or equipment installed in the reconstruction or replacement of such facility, device, fixture, equipment, or machinery." This section defines "specialty chemicals" as "those chemicals used to enhance or further treat wastewater, including, but not limited to, defoamers, nutrients, and polymers", and defines "bioaugmentation products" as "the microorganisms used in waste treatment plants to break down solids and consume organic matter."
[16] s. 212.08(6), F.S.
[17] s. 212.08(7)(tt), 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.[18] However, certain entities that meet this definition are exempt from PSC regulation as utilities.[19] 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.[20] 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 and/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 (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.[21]

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.[22]

Reserve Funds for Water and Wastewater Utilities

As noted above, the Study Committee was required to consider, among other things, the availability of low interest loans to a small, privately owned water or wastewater utility. 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 short-term needs. 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.[23]

Section 367.081, F.S., establishes the rate-setting procedures for water and wastewater IOUs regulated by the PSC. None of these procedures provides explicit statutory authority for the PSC to establish reserve funds for water and wastewater IOUs during the rate-setting process.

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[18] s. 367.021(12), F.S.
[19] *See* s. 367.022, F.S.
[20] s. 367.022(8), F.S.
[21] *Study Committee Report*, p. 61.
[22] *Id.*, pp. 61-62.
[23] *Id.*, p. 67.

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.[24] 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:[25]

- 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.[26]

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.[27] 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.[28] The amount of rate case expense deemed reasonable is apportioned for recovery though 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.[29] According to the Study Committee, the impact of rate case expense on customer bills varies from case to case and is often negligible.[30] However, one analysis presented to the Study Committee noted 3 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 6 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.[31]

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.[32] 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

[24] s. 367.081(4)(b), F.S.
[25] *Id.*
[26] s. 367.081(4)(c), F.S.
[27] s. 367.081(7), F.S.
[28] *Id.*
[29] s. 367.0816, F.S.
[30] *Study Committee Report*, p. 83.
[31] *Study Committee Report*, p. 88.
[32] s. 367.0814, F.S.

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.[33] 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.[34] 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.[35] The average drops to $3,025 by removing one case.[36]

Quality of Service / Secondary Standards

The Department of Environmental Protection (DEP) is the state agency with primary authority to implement and enforce federal and state drinking water and wastewater standards. The focus of 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.[37]

With respect to drinking water, DEP has also adopted secondary standards for contaminants related to color, corrosion, and odor.[38] Testing for these secondary standards is required on a regular basis, though DEP generally requires corrective action only if users (i.e., water customers) voice significant complaints or if a primary contaminant level has also been exceeded.

With respect to wastewater, DEP requires that new treatment plants and modifications to existing plants be designed and sited to minimize adverse effects on neighboring residential and commercial areas resulting from odors, noise, aerosol drift, and lighting.[39] Permittees must give 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.[40] Likewise, if existing facilities fail to function as intended and create such adverse effects, the permittee must take corrective action, or DEP may require corrective action.[41] DEP generally requires corrective action only in response to significant complaints or if a primary contaminant level has also been exceeded.[42]

The PSC considers an IOU's quality of service in rate cases. In doing so, the PSC evaluates the quality of the product, the operating condition of the IOU's plant and facilities, and the IOU's efforts to address customer satisfaction.[43] Sanitary surveys, outstanding citations, violations and consent orders on file with DEP and county health departments are also considered. In addition, DEP and county health department officials' testimony and customer testimony concerning quality of service is considered.[44] In most cases, the emphasis of this evaluation is compliance with standards related to health and safety of the public and the environment.[45] If the PSC finds that an IOU has failed to provide its customers with water or wastewater service that meets the standards set by DEP or the

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[33] *Id.* However, a person other than the utility may protest or appeal the PSC's order approving the rates and charges.
[34] *Study Committee Report*, pp. 84-91.
[35] *Study Committee Report*, p. 87.
[36] *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.
[37] *See* ch. 403, F.S., and Chapters 62-550, 555, 602, and 699, F.A.C., for drinking water regulations, and Chapters 62-600, 604, 610, 620, 621, and 640, F.A.C., for wastewater regulations.
[38] Rule 62-550.320, F.A.C.
[39] Rule 62-600.400(2)(a), F.A.C.
[40] *Id.*
[41] Rule 62-600.410, F.A.C.
[42] *Study Committee Report*, p. 105.
[43] Rule 25-30.433(1), F.A.C.
[44] *Id.*
[45] *Study Committee Report*, p. 106.

water management districts, the PSC may reduce the IOU's return on equity until the standards are met.[46]

In 2014, the Legislature passed CS/CS/CS/SB 272,[47] which established a process by which the customers of an IOU may petition the PSC to investigate issues concerning the quality of the water service provided by the utility. Upon review of a petition signed by at least 65 percent of the IOU's customers, the utility's response, and other relevant factors, the PSC may:

- Dismiss the petition, if doing so is supported by clear and convincing evidence;
- Require the utility to take corrective actions to resolve the issues identified; or
- Revoke the utility's certificate of authorization and appoint a receiver until a sale of the utility is approved by the PSC.

The bill also required the PSC, when setting rates for a water utility, specifically to consider the extent to which the utility provides service that meets secondary drinking water standards established by DEP. If the PSC determines that the utility's water service does not meet these standards, the utility must create an estimate of the costs and benefits of a plausible solution to address each issue identified by the PSC, meet with its customers to discuss these estimates and the time necessary to implement the solution, and report the results of these meetings to the PSC. The PSC may require the utility to implement a solution for each issue that is in the best interests of the customers, and the utility may recover its costs to implement any solutions ordered by the PSC. The PSC may impose penalties for a utility's failure to adequately resolve each issue as required.

Drinking Water State Revolving Fund

Sections 403.8532 and 403.8533, F.S., establish the Drinking Water State Revolving Fund (SRF). The SRF, which is administered by DEP, provides low-interest loans to eligible entities for planning, designing, and constructing public water facilities. Eligible entities include, among others, investor-owned public water systems that are legally responsible for public water services and which serve no more than 1,500 connections.[48] Projects eligible for SRF loans include new construction and improvements of public water systems, inclusive of storage, transmission, treatment, disinfection, and distribution facilities.[49] Loan funding is based on a priority system which takes into account public health considerations, compliance, and affordability.[50]

Based on data gathered from IOU's 2011 annual reports filed with the PSC, the Study Committee determined that all Class C water IOUs and almost all (28 out of 33) Class B water IOUs serve no more than 1,500 connections and are therefore eligible for the SRF program.[51] The remaining PSC-regulated Class B and Class A water IOUs are, presumably, not eligible to use the SRF program.

Effect of Proposed Changes

This bill adopts several of the Study Committee's recommendations for legislative action. In particular, the bill:

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[46] s. 367.111(2), F.S.
[47] Ch. 2014-68, Laws of Florida, codified at ss. 367.072 and 367.0812, F.S.
[48] s. 403.8532(3), F.S. 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.
[49] Florida Department of Environmental Protection, *Drinking Water State Revolving Fund - Eligible Local Governments*, http://www.dep.state.fl.us/water/wff/dwsrf/ellocgov.htm (last accessed November 12, 2015).
[50] s. 403.8532(9)(a), F.S.
[51] *Study Committee Report*, pp. 36-37. The report notes that this data does not include water IOUs that are regulated by counties.

- Directs the Division of Bond Finance to review the allocation of private activity bonds (PABs) in Florida with respect to water and wastewater projects.
- Provides a sales tax exemption for sales or leases to a water or wastewater IOU owned or operated by a Florida corporation 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 plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.
- Authorizes the PSC, during a rate case, to create an individual IOU reserve fund to be used for certain infrastructure repair and replacement projects, with disbursement subject to approval by the PSC.
- 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:
    - In excess of 50 percent of the amount of rate case expense deemed reasonable by the PSC;
    - For more than one rate case at any given time; and
    - Where the rate case expense is incurred to prepare or file a staff-assisted rate case in which no party intervenes.
- 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 (SRF) to all for-profit water utilities.

Private Activity Bonds

The bill directs the Division of Bond Finance of the State Board of Administration to review the allocation of private activity bonds (PABs) to determine the availability of additional allocation and reallocation of PABs for water and wastewater infrastructure projects.

Sales and Use Tax Exemption

The bill creates an exemption from the state sales and use tax for sales and leases to a water or wastewater IOU. To be eligible for this exemption, the IOU must be owned or operated by a Florida corporation, and its sole or primary function must be to construct, maintain, or operate a water or wastewater system within the state. In addition, the goods or services purchased or leased must be used in the state for the water or wastewater utility.

Resellers of Water Service

The bill creates 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 reseller's actual purchase price of the water plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.

Absent this exemption, a water reseller who charges more than the actual purchase price of the water would be subject to PSC regulation and would incur the costs and obligations of such regulation. While the costs would be recoverable from the reseller's customers through PSC-approved rates, a reseller may not wish to incur the additional regulatory obligations.

This provision may encourage resellers to utilize individual metering more often for their tenants. Through individual metering, water users can be charged more accurately for the water they consume. Thus, customers of resellers who utilize individual metering may be more likely to use water more efficiently.

Reserve Funds for Water and Wastewater IOUs

The bill authorizes the PSC, in a rate case proceeding, to create a reserve fund to be used by a water or wastewater IOU for repair or replacement of its existing distribution and collection infrastructure if the infrastructure is either near the end of its useful life or detrimental to water quality or reliability of service. The reserve fund may be funded through a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit. The bill directs the PSC to adopt rules to govern the funding, implementation, management, and use of the fund. These rules must include, but are not limited to:

- 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.
- Requirements for PSC authorization prior to disbursements from the fund.

The establishment of individual reserve funds may reduce borrowing costs and make funding more readily available for PSC-regulated water and wastewater IOUs. IOUs may be able to avoid the need to access capital markets to finance certain projects and repairs and/or to request a rate increase to cover the costs of the projects and repairs.

Pass-Through Costs

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

- Fees charged for wastewater biosolids disposal.
- Costs incurred for a tank inspection required by DEP or a local governmental authority.
- Treatment plant operator and water distribution system license fees required by DEP or a local governmental authority.
- Water or wastewater operating permit fees charged by DEP or a local governmental authority.
- Consumptive 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 pas-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.

Rate Case Expense

The bill limits an IOU's ability to recover rate case expense in three instances.

First, the bill provides that an IOU may recover from ratepayers only up to 50 percent of the amount of rate case expense that the PSC finds reasonable. Presumably, the remaining 50 percent will be borne by the IOU's owners/shareholders.

Second, the bill requires an IOU, 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 an IOU from filing a necessary rate case, though it may also result in more careful consideration by an IOU of the costs, timing, and need to file a rate case.

Third, 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 an IOU 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 IOU after the initial PSC staff report is issued to customers and the utility. It also authorizes the 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 bill requires the PSC to adopt rules by December 31, 2016, to implement these provisions.

Quality of Service / Secondary Standards

The bill provides the PSC specific authority to review, on its own motion or based upon customer complaints, a water IOU's water quality in relation to secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) established by DEP. The bill also authorizes the PSC, on its own motion or based upon customer complaints, to review a wastewater IOU's service in relation to odor, noise, aerosol drift, or lighting issues.

Drinking Water State Revolving Fund

The bill removes the current size restrictions on water IOUs eligible to utilize the Drinking Water State Revolving Fund (SRF). Water IOUs of any size will be eligible to seek low-interest loans through the SRF for planning, designing, and constructing public water facilities, including storage, transmission, treatment, disinfection, and distribution facilities. This may increase competition for available funds.

B. SECTION DIRECTORY:

Section 1. Creates s. 159.8105, F.S., requiring the Division of Bond Finance to review the allocation of private activity bonds.

Section 2. Amends s. 212.08, F.S., relating to specified exemptions to the state tax on sales, rental, use, consumption, distribution and storage.

Section 3. Amends s. 367.022, F.S., relating to exemptions to regulation by the Public Service Commission.

Section 4. Amends s. 367.081, F.S., relating to the procedure for fixing and changing rates.

Section 5. Amends s. 367.0814, F.S., relating to staff assistance in changing rates and charges.

Section 6. Amends s. 367.0816, F.S., relating to recovery of rate case expenses.

Section 7. Amends s. 367.111, F.S., relating to service quality.

Section 8. Amends s. 403.8532, F.S., relating to use of the drinking water state revolving loan fund.

Section 9. Amends s. 367.171, F.S., to conform a cross-reference.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference, on October 28, 2015, estimated that the sales tax exemption in the bill will have a negative impact on state revenues of $2.7 million in FY 2016-17 and $3.0 million in each fiscal year from FY 2017-18 through FY 2020-21.

2. Expenditures:

   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.[52] 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 SRF; however, it indicated that these costs will be covered by service fees collected in the normal course of the SRF program.[53]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference, on October 28, 2015, estimated that the sales tax exemption in the bill will have a recurring negative impact on local government revenues of $0.7 million annually beginning in FY 2016-17.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private Activity Bonds

To the extent that additional private activity bonds are made available for eligible projects, more water and wastewater IOUs may be encouraged to make investments in water and wastewater infrastructure in the state at a lower cost to ratepayers than would otherwise result from such expenditures.

Sales and Use Tax Exemption

This exemption would create tax savings for water and wastewater IOUs within Florida and may encourage more of these utilities to make purchases necessary for infrastructure repairs and improvements at a lower cost to ratepayers than would otherwise result from such expenditures.

[52] Department of Revenue, Agency Analysis of 2015 HB 1173, p. 3 (March 5, 2015).
[53] Department of Environmental Protection, Agency Analysis of 2015 HB 1173, pp. 2-4 (March 13, 2015).

Resellers of Water Service

The creation of a regulatory exemption for water resellers who add no more than the costs of meter reading and billing (capped at 9 percent) to their purchase price for water, will allow these resellers to avoid the costs and obligations of regulation and may encourage them to invest in individual metering apparatus.

Reserve Funds for Water and Wastewater IOUs

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, the expense of which ultimately would be borne by ratepayers.

Pass-Through Costs

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, the expense of which ultimately would be borne by ratepayers.

Rate Case Expense

The limitations on the recovery of rate case expense may reduce the impact of rate case expense on ratepayers' bills. However, these limitations may discourage an IOU from seeking a rate increase necessary to make system repairs and improvements or to assure it a reasonable rate of return on its investment.

Quality of Service / Secondary Standards

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.

Drinking Water State Revolving Fund

The expanded availability of low-interest financing through the State Revolving Fund to additional water IOUs may encourage more of these utilities to make investments in water infrastructure in the state at a lower cost to ratepayers than would otherwise result from such expenditures.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

The PSC's analysis indicates that the provisions of the bill that prohibit or limit recovery of rate case expense in certain circumstances may result in a regulatory taking without just compensation in violation of Amendment XIV of the U.S. Constitution.[54] This provision establishes that no person shall be deprived of life, liberty or property without due process of law and that private property shall not be taken for public use without just compensation.

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to adopt rules:

- To govern the operation of individual utility reserve funds created by the PSC.
- To administer the prohibition on recovery of rate case expense in specified circumstances in a staff-assisted rate case.

The bill authorizes the PSC to adopt rules establishing additional specific expense items eligible for pass-through treatment in IOU rates.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The sales and use tax exemption in the bill applies only to goods and services used in the state. In its analysis of similar language in a 2015 bill, the Department of Revenue noted that a seller will not know at the time of sale where the goods or services will be used. Thus, the department recommended additional language requiring the purchaser to provide the seller with a written statement certifying entitlement to the exemption.[55]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[54] Public Service Commission, Analysis of 2016 HB 491 (November 12, 2015).
[55] Department of Revenue, Agency Analysis of 2015 HB 1173, p. 5 (March 5, 2015).

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 491 (2016)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Energy & Utilities Subcommittee

Representative Smith offered the following:

Amendment (with title amendment)

Remove lines 103-104 and insert:

(c) In establishing rates for a utility, the commission shall create a utility reserve fund for infrastructure repair and

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T I T L E A M E N D M E N T

Remove line 15 and insert:

requiring the commission to create a utility reserve

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 491 (2016)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Energy & Utilities Subcommittee

Representative Smith offered the following:

Amendment (with title amendment)

Remove lines 210-212 and insert:

and such other criteria as it may establish by rule.

T I T L E A M E N D M E N T

Remove lines 22-24 and insert:

additional specified expense items; amending s.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 491 (2016)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Energy & Utilities Subcommittee

Representative Smith offered the following:

Amendment

Remove lines 229-232 and insert:

utility. If there is a protest or appeal by a party other than the utility, the commission shall award rate case expenses to the utility for attorney fees or fees of other outside consultants for costs incurred after the protest or appeal. By December 31,