



Energy & Utilities Subcommittee

**Wednesday, February 5, 2014
9:30 AM
Webster Hall (212 Knott)**

MEETING PACKET



The Florida House of Representatives

Regulatory Affairs Committee

Energy & Utilities Subcommittee

Will Weatherford
Speaker

Jose Felix Diaz
Chair

AGENDA

February 5, 2014
9:30 am – 11:30 am
Webster Hall (212 Knott)

Opening Remarks by Chair Diaz

Consideration of the following bill:

HB 357 – Water and Wastewater Utility Systems (by Santiago)

Closing Remarks by Chair Diaz

Adjournment

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 2/3/2014 4:02:05PM)

Amended(1)

Energy & Utilities Subcommittee

Start Date and Time: Wednesday, February 05, 2014 09:30 am
End Date and Time: Wednesday, February 05, 2014 11:30 am
Location: Webster Hall (212 Knott)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 357 Water and Wastewater Utility Systems by Santiago

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., Tuesday, February 4, 2014.

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., Tuesday, February 4, 2014.


NOTICE FINALIZED on 02/03/2014 16:02 by McCloskey.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 357 Water and Wastewater Utility Systems

SPONSOR(S): Santiago

TIED BILLS: **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Keating	 Keating
2) Finance & Tax Subcommittee			
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.

HB 357 adopts several of the Study Committee’s recommendations for legislative action. In particular, the bill:

- Expands the availability of low-interest loans through the State Revolving Fund (SRF) to all for-profit water utilities.
- 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 an investor-owned water or wastewater utility (IOU) owned or operated by a Florida corporation.
- Creates an exemption from Public Service Commission (PSC) regulation for persons who resell water 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%.
- Authorizes the PSC, during a rate case, to create an individual IOU reserve fund to be used for projects identified in an IOU’s capital improvement plan, 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 the extent that the rate case expense exceeds the amount of the total rate increase approved by the PSC exclusive of rate case expense;
 - For more than one rate case at any given time; and
 - To the extent that the rate case expense is incurred to prepare or file a staff-assisted rate case in which no party intervenes.
- Provides a mechanism, within a rate case, for the identification and potential resolution of issues involving secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) and wastewater operational requirements related to odor, noise, aerosol drift, and lighting.

The Revenue Estimating Conference has not yet estimated the impact of the bill on state and local government revenues. It has scheduled this bill for consideration at its February 7, 2014, meeting. The provision of the bill that creates an exemption from the state sales and use tax for certain sales and leases to water and wastewater IOUs will have a negative impact on state revenues.

The effective date of the bill is July 1, 2014.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0357.EUS.DOCX

DATE: 2/4/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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 The PSC currently has jurisdiction over water and wastewater IOUs in 37 of 67 counties in Florida, accounting for approximately 120,567 water customers and 74,317 wastewater customers.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 an 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

As of 2012, there were 14 Class A utilities, 33 Class B utilities, and 93 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

¹ Section 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, April 2013.

⁴ Section 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, as appointed by the Governor: a county commission that

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 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.

regulates investor-owned water/wastewater utilities; a governmental authority created under Chapter 163, F.S.; a water management district; a county health department; two Class A utilities; a Class B utility; a Class C utility; a utility owned or operated by a municipal or county government; customers of a Class A utility; customers of a Class B or C utility; the Florida Section of the American Water Works Association; and the Florida Rural Water Association.

⁷ Chapter 2012-187, Laws of Florida, Section 2.

⁸ *Id.*

⁹ See Sections II and III, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, dated February 15, 2013 (*Study Committee Report*).

- Reduce the impact of rate case expense on customer rates by prohibiting the recovery of rate case expense in certain circumstances.
- Provide a mechanism for the resolution of issues involving secondary water standards (e.g., odor, taste, corrosiveness, etc.) and wastewater operational requirements.

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 the Department of Environmental Protection (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.¹⁰ Projects eligible for SRF loans include new construction and improvements of public water systems, inclusive of storage, transmission, treatment, disinfection, and distribution facilities.¹¹ Loan funding is based on a priority system which takes into account public health considerations, compliance, and affordability.¹²

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.¹³ The remaining PSC-regulated Class B and Class A water IOUs are, presumably, not eligible to use the SRF program.

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 sections 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.¹⁴

Private activity bonds are administered in Florida by the Division of Bond Finance of the State Board of Administration (the Division) under sections 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.¹⁵ This amount is allocated on January 1 of each year as follows:¹⁶

- 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 counties¹⁷ 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.

¹⁰ Section 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.

¹¹ <http://www.dep.state.fl.us/water/wff/dwsrf/ellogov.htm> (most recently accessed on January 31, 2014)

¹² Section 403.8532(9)(a), F.S.

¹³ *Study Committee Report*, pp. 36-37. The report notes that this data does not include water IOUs that are regulated by counties.

¹⁴ *Tax-Exempt Private Activity Bonds, Compliance Guide*, Internal Revenue Service Publication 4078, Version 09-2005.

¹⁵ Section 159.804, F.S.

¹⁶ *Id.*

¹⁷ These individual counties and groups of counties are identified in section 159.804(2)(b), F.S.

- 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.¹⁸

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 section 212.05, F.S.¹⁹ Florida law provides an exemption for sales made to political subdivisions²⁰ (which may include water and wastewater utilities owned and operated by governmental entities) and for sales and leases to non-profit water systems.²¹

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.²² However, certain entities that meet this definition are exempt from PSC regulation as utilities.²³ 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.²⁴ 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 Section 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.²⁵

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.²⁶

¹⁸ *Study Committee Report*, p. 43.

¹⁹ But see section 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."

²⁰ Section 212.08(6), F.S.

²¹ Section 212.08(7)(tt), F.S.

²² Section 367.021(12), F.S.

²³ See Section 367.022, F.S.

²⁴ Section 367.022(8), F.S.

²⁵ *Study Committee Report*, p. 61.

²⁶ *Id.*, pp. 61-62.

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.²⁷

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.

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.²⁸ 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:²⁹

- 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.³⁰

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.³¹ 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.³² The amount of rate case expense deemed reasonable is

²⁷ *Id.*, p. 67.

²⁸ Section 367.081(4)(b), F.S.

²⁹ *Id.*

³⁰ Section 367.081(4)(c), F.S.

³¹ Section 367.081(7), F.S.

³² *Id.*

apportioned for recovery through the IOU's rates over a period of 4 years. At the end of this 4-year period, the IOU's rates are reduced to remove the impact of the rate case expense.³³ According to the Study Committee, the impact of rate case expense on customer bills varies from case to case and is often negligible.³⁴ 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.³⁵

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 IOU's 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 \$250,000 is permitted by law to request and obtain assistance from the PSC staff in preparing the IOU's rate case.³⁶ These rate cases are referred to as staff-assisted rate cases (SARCs). In these cases, the PSC staff reviews the IOU's books and records, inspects the IOU's premises, prepares a quality of service analysis, and presents recommended rates and charges to the PSC for consideration. In requesting staff assistance, the IOU agrees to accept the final rates and charges approved by the PSC unless these rates and charges produce less revenue than the existing rates and charges.³⁷ 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.³⁸ 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.³⁹ The average drops to \$3,025 by removing one case.⁴⁰

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.⁴¹

With respect to drinking water, DEP has also adopted secondary standards for contaminants related to color, corrosion, and odor.⁴² 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

³³ Section 367.0816, F.S.

³⁴ *Study Committee Report*, p. 83.

³⁵ *Study Committee Report*, p. 88.

³⁶ Section 367.0814, F.S.

³⁷ *Id.* However, a person other than the utility may protest or appeal the PSC's order approving the rates and charges.

³⁸ *Study Committee Report*, pp. 84-91.

³⁹ *Study Committee Report*, p. 87.

⁴⁰ *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.

⁴¹ See Chapter 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.

⁴² Rule 62-550.320, F.A.C.

resulting from odors, noise, aerosol drift, and lighting.⁴³ 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.⁴⁴ 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.⁴⁵ DEP generally requires corrective action only in response to significant complaints or if a primary contaminant level has also been exceeded.⁴⁶

As previously noted, 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.⁴⁷ Sanitary surveys, outstanding citations, violations and consent orders on file with the Department of Environmental Protection (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.⁴⁸ In most cases, the emphasis of this evaluation is compliance with standards related to health and safety of the public and the environment.⁴⁹ 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 water management districts, the PSC may reduce the IOU's return on equity until the standards are met.⁵⁰

Effect of Proposed Changes

HB 357 adopts several of the Study Committee's recommendations for legislative action. In particular, the bill:

- Expands the availability of low-interest loans through the State Revolving Fund (SRF) to all for-profit water utilities.
- 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.
- Creates an exemption from PSC regulation for persons who resell water 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%.
- Authorizes the PSC, during a rate case, to create an individual IOU reserve fund to be used for projects identified in an IOU's capital improvement plan, 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 the extent that the rate case expense exceeds the amount of the total rate increase approved by the PSC exclusive of rate case expense;
 - For more than one rate case at any given time; and
 - To the extent that the rate case expense is incurred to prepare or file a staff-assisted rate case in which no party intervenes.
- Provides a mechanism, within a rate case, for the identification and potential resolution of issues involving secondary drinking water standards (e.g., standards related to odor, taste, and

⁴³ Rule 62-600.400(2)(a), F.A.C.

⁴⁴ *Id.*

⁴⁵ Rule 62-600.410, F.A.C.

⁴⁶ *Study Committee Report*, p. 105.

⁴⁷ Rule 25-30.433(1), F.A.C.

⁴⁸ *Id.*

⁴⁹ *Study Committee Report*, p. 106.

⁵⁰ Section 367.111(2), F.S.

corrosiveness) and wastewater operational requirements related to odor, noise, aerosol drift, and lighting.

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.

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 or 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.

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 up to 9 percent of the actual purchase price of the water or the actual cost of meter reading and billing. 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 for a water or wastewater IOU. The bill directs the PSC to adopt rules to govern such a 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 expense items:

- Fees charged for wastewater sludge removal.
- A loan service fee or loan origination fee associated with a loan related to an eligible project, as specified by PSC rule, provided that the project is associated with new infrastructure or improvements to existing infrastructure needed to achieve or maintain compliance with primary or secondary drinking water standards or wastewater treatment standards that relate to:
 - The provision of water or wastewater service for existing customers;
 - The violation or prevention of a violation of primary or secondary health standards;
 - The replacement or upgrade of again water or wastewater infrastructure if needed to achieve or maintain compliance with primary or secondary regulations; or
 - Projects consistent with the most recent long-range plan of the IOU on file with PSC, except for projects primarily intended to serve future growth.
- Costs incurred for a tank inspection required by DEP or a local government authority.
- Operator and distribution license fees required by DEP or a local government authority.
- Water or wastewater operating permit fees charged by DEP or a local government authority.
- Consumptive or water use permit fees charged by a water management district.

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

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

Rate Case Expense

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

First, the bill provides that the PSC, in determining a reasonable level of rate case expense in a rate case, must disallow any rate case expense that exceeds the total rate increase approved by the PSC exclusive of rate case expense. This provision effectively caps the amount of rate case expense that the PSC can deem reasonable in any rate case at the amount of the total rate increase approved minus any rate case expense. This provision appears intended to discourage IOUs from filing for rate increases to cover costs that are outweighed by the IOUs expense in preparing and proceeding with the rate case. This may arbitrarily limit an IOU's ability to recover its costs to prepare and proceed with a necessary rate case. It may also result in more careful consideration by an IOU of the costs, timing, and need to file a rate case. In some instances, it could provide a perverse incentive for an IOU to inflate its stated need for a rate increase in the hope that the approved rate increase will exceed the level of rate case expense it has requested.

Second, the bill requires an IOU, when it begins recovery of approved rate case expense associated with a new rate case, to forfeit the recovery of any uncollected rate case expense approved in a prior

rate case. The bill provides that this limitation does not apply to the recovery of rate case expense for a limited rate proceeding. 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. As with the previous provision, this may arbitrarily limit an IOU’s ability to recover its costs to prepare and proceed with a necessary rate case. However, 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.

Quality of Service / Secondary Standards

The bill creates a mechanism, within the context of a rate case, for the identification and potential resolution of issues involving secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) and wastewater operational requirements related to odor, noise, aerosol drift, and lighting.

The bill requires the PSC, in determining the value and quality of water service provided by an IOU, to consider the extent to which the IOU meets secondary drinking water standards established by DEP and the local government. In making this determination, the PSC must consider: testimony and evidence provided by customers and the utility; relevant complaints filed during the previous 5 years with the PSC, DEP, county health departments, or the local government; results of past tests required by DEP or county health departments to measure compliance with secondary standards; and results of other tests that the PSC deems necessary.

The bill also requires the PSC, in determining the value and quality of wastewater service provided by an IOU, to consider the extent to which the IOU provides service in a manner that does not cause odor, noise, aerosol drift, or lighting that adversely affects customers. In making this determination, the PSC must consider: testimony and evidence provided by customers and the utility; and relevant complaints filed during the previous 5 years with the PSC, DEP, county health departments, or the local government.

If, as a result of these analyses, the PSC determines that the IOU’s water service does not meet secondary drinking water standards or that the IOU’s wastewater service adversely affects customers due to odor, noise, aerosol drift, or lighting, the IOU must take the following steps:

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

The bill requires the PSC to adopt rules necessary to assess and enforce the IOU’s compliance with these provisions. These rules must prescribe penalties, including fines and reduction of return on equity of up to 100 basis points, if an IOU “fails to adequately address of offer solutions to the water or wastewater problems.”

The bill does not explicitly require that the IOU take any action, such as repairs or improvements, to remedy the problem. Thus, the circumstances in which an IOU could be penalized for failure to “adequately address” a particular problem are unclear. Further, given the somewhat subjective nature of some of these issues (e.g., what is an acceptable odor, taste, or noise level) and the possibility for

localized problems on an IOU's system, there may not be consensus among all customers as to whether a problem has been adequately addressed.

B. SECTION DIRECTORY:

Section 1. Creates s. 159.810, 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. 403.8532, F.S., relating to use of the drinking water state revolving loan fund.

Section 8. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not yet estimated the fiscal impact of the bill on state government revenues. It has scheduled this bill for consideration at its February 7, 2014, meeting.

The bill creates an exemption from the state sales and use tax for certain sales and leases to water and wastewater IOUs. This exemption will have a negative impact on state revenues.

2. Expenditures:

None. 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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not yet estimated the fiscal impact of the bill on local government revenues. It has scheduled this bill for consideration at its February 7, 2014, meeting.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

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.

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 or, alternatively, up to a 9 percent charge to their purchase price for water, will remove the costs and obligations of regulation for these resellers 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.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal government.

2. Other:

The PSC's analysis of the bill indicates that some provisions of the bill that prohibit or limit recovery of rate case expense in certain circumstances may be interpreted to result in a regulatory taking without just compensation in violation of Amendments V and XIV of the U.S. Constitution and Article I, Sections 2 and 9 of the State Constitution. These provisions establish 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 assess and enforce compliance with the provisions that create a mechanism for the identification and potential resolution of issues involving secondary drinking water standards and wastewater operational requirements, including the prescription of penalties if an IOU fails to adequately address or offer solutions to the issues identified.
- To govern the operation of individual utility reserve funds created by the PSC.
- To govern the determination of projects for which loan service fees or loan origination fees are eligible for pass-through treatment in IOU rates.
- 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 bill provides a list of specified expense items eligible for pass-through treatment in IOU rates but indicates that the list is not exclusive. Thus, the bill is ambiguous as to what types of other expense items might also be eligible for pass-through treatment.

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

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to water and wastewater utility
 3 systems; creating s. 159.810, F.S.; requiring the
 4 Division of Bond Finance of the State Board of
 5 Administration to review the allocation of private
 6 activity bonds to determine the availability of
 7 additional allocation or reallocation of bonds for
 8 water and wastewater infrastructure projects; amending
 9 s. 212.08, F.S.; extending tax exemptions to certain
 10 investor-owned water and wastewater utilities;
 11 amending s. 367.022, F.S.; exempting from regulation
 12 by the Florida Public Service Commission a person who
 13 resells water service to certain tenants or residents
 14 up to a specified cost; amending s. 367.081, F.S.;
 15 establishing criteria for determining the quality of
 16 water and wastewater services provided by a utility;
 17 establishing a procedure for the commission to follow
 18 if it determines that a utility has failed to provide
 19 water and wastewater services that meet certain
 20 standards; authorizing the commission to adopt rules
 21 that include fines; authorizing the commission to
 22 create a utility reserve fund to establish rates for a
 23 utility; providing for the automatic increase or
 24 decrease of approved rates under certain
 25 circumstances; establishing criteria for adjusted
 26 rates; specifying expense items that cause an

27 automatic increase or decrease in utility rates;
 28 providing standards to allow the commission to
 29 establish, by rule, additional specified expense items
 30 that cause an automatic increase or decrease of
 31 utility rates; deleting certain requirements for
 32 approved utility rates that are automatically
 33 increased or decreased, upon notice to the commission;
 34 deleting a prohibition to conform to changes made by
 35 the act; prohibiting the commission from awarding rate
 36 case expense under certain circumstances; amending s.
 37 367.0814, F.S.; describing the circumstances under
 38 which the commission may award rate case expense to
 39 cover attorney fees or fees for other outside
 40 consultants; requiring the commission to adopt related
 41 rules; amending s. 367.0816, F.S.; requiring the
 42 commission to determine that the amount of rate case
 43 expense is reasonable before the expense can be
 44 apportioned for a certain period; providing
 45 limitations on and rules for the amortized rate case
 46 expense recovery; amending s. 403.8532, F.S.; allowing
 47 the Department of Environmental Protection to make, or
 48 to request that the Florida Water Pollution Control
 49 Financing Corporation make, loans, grants, and
 50 deposits to for-profit privately owned or investor-
 51 owned systems, and deleting current restrictions on
 52 such activity; providing an effective date.

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

Section 1. Section 159.810, Florida Statutes, is created to read:

159.810 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 or reallocation of bonds for water and wastewater infrastructure projects.

Section 2. Paragraph (kkk) 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

79 otherwise taxable under this chapter unless the entity has
 80 obtained a sales tax exemption certificate from the department
 81 or the entity obtains or provides other documentation as
 82 required by the department. Eligible purchases or leases made
 83 with such a certificate must be in strict compliance with this
 84 subsection and departmental rules, and a ~~any~~ person who makes an
 85 exempt purchase with a certificate that is not in strict
 86 compliance with this subsection and the rules is liable for and
 87 shall pay the tax. The department may adopt rules to administer
 88 this subsection.

89 (kkk) Investor-owned water and wastewater utilities.—Sales
 90 or leases to an investor-owned water or wastewater utility owned
 91 or operated by a Florida corporation are exempt from the tax
 92 imposed by this chapter if the sole or primary function of the
 93 corporation is to construct, maintain, or operate a water or
 94 wastewater system in this state and if the goods or services
 95 purchased or leased are used in this state.

96 Section 3. Present subsections (9) through (12) of section
 97 367.022, Florida Statutes, are redesignated as subsections (10)
 98 through (13), respectively, and a new subsection (9) is added to
 99 that section, to read:

100 367.022 Exemptions.—The following are not subject to
 101 regulation by the commission as a utility nor are they subject
 102 to the provisions of this chapter, except as expressly provided:

103 (9) Any person who resells water service to his or her
 104 tenants or to individually metered residents for a fee that does

105 | not exceed the actual purchase price plus:

106 | (a) Up to 9 percent of the actual purchase price; or

107 | (b) The actual cost of meter reading and billing.

108 | Section 4. Subsections (2), (4), and (7) of section
109 | 367.081, Florida Statutes, are amended to read:

110 | 367.081 Rates; procedure for fixing and changing.—

111 | (2) (a) ~~1.~~ The commission shall, ~~either~~ upon request or upon
112 | its own motion, fix rates that ~~which~~ are just, reasonable,
113 | compensatory, and not unfairly discriminatory.

114 | 1. In each ~~every~~ such proceeding, the commission shall
115 | consider the value and quality of the service and the cost of
116 | providing the service, which must ~~shall~~ include, but need not be
117 | limited to, debt interest; the requirements of the utility for
118 | working capital; maintenance, depreciation, tax, and operating
119 | expenses incurred in the operation of all property used and
120 | useful in the public service; and a fair return on the
121 | investment of the utility in property used and useful in the
122 | public service. However, the commission shall not allow the
123 | inclusion of contributions-in-aid-of-construction in the rate
124 | base of a ~~any~~ utility during a rate proceeding, or ~~nor shall the~~
125 | ~~commission~~ impute prospective future contributions-in-aid-of-
126 | construction against the utility's investment in property used
127 | and useful in the public service. ~~and~~ Accumulated depreciation
128 | on such contributions-in-aid-of-construction shall not be used
129 | to reduce the rate base, and ~~nor shall~~ depreciation on such
130 | contributed assets shall not be considered a cost of providing

131 utility service.

132 2. For purposes of such proceedings, the commission shall
 133 consider utility property, including land acquired or facilities
 134 constructed or to be constructed within a reasonable time in the
 135 future, up to ~~not to exceed~~ 24 months after the end of the
 136 historic base year used to set final rates unless a longer
 137 period is approved by the commission, to be used and useful in
 138 the public service, if:

139 a. Such property is needed to serve current customers;

140 b. Such property is needed to serve customers 5 years
 141 after the end of the test year used in the commission's final
 142 order on a rate request as provided in subsection (6) at a
 143 growth rate for equivalent residential connections up to ~~not to~~
 144 ~~exceed~~ 5 percent per year; or

145 c. Such property is needed to serve customers more than 5
 146 full years after the end of the test year used in the
 147 commission's final order on a rate request as provided in
 148 subsection (6) only to the extent that the utility presents
 149 clear and convincing evidence to justify such consideration.

150 3. In determining the value and quality of water service
 151 provided by a utility and whether such utility has satisfied its
 152 obligation to provide water service to its customers, the
 153 commission shall consider the extent to which the utility meets
 154 secondary drinking water standards regarding taste, odor, color,
 155 or corrosiveness which are established by the Department of
 156 Environmental Protection and the local government. In making its

157 | determination, the commission shall consider:

158 | a. Testimony and evidence provided by customers and the
 159 | utility;

160 | b. Complaints that relate to the secondary water standards
 161 | which customers have filed during the past 5 years with the
 162 | commission, the Department of Environmental Protection, the
 163 | county health departments, or the local government;

164 | c. The results of past tests required by the Department of
 165 | Environmental Protection or county health departments which
 166 | measure the utility's compliance with the applicable secondary
 167 | drinking water standards; and

168 | d. The results of other tests, if deemed necessary by the
 169 | commission.

170 | 4. In determining the value and quality of wastewater
 171 | service provided by a utility, the commission shall consider the
 172 | extent to which the utility provides wastewater service to its
 173 | customers which does not cause odor, noise, aerosol drift, or
 174 | lighting that adversely affects customers. In making its
 175 | determination, the commission shall consider:

176 | a. Testimony and evidence provided by customers and the
 177 | utility; and

178 | b. All complaints related to the alleged odor, noise,
 179 | aerosol drift, or lighting problem which customers have filed
 180 | over the past 5 years with any of the following:

181 | (I) The commission;

182 | (II) The Department of Environmental Protection;

183 (III) The county health departments; or

184 (IV) The local government.

185 5. If the commission determines that a utility provides
 186 water service that does not meet the secondary water quality
 187 standards of the Department of Environmental Protection and the
 188 local government regarding taste, odor, color, or corrosiveness,
 189 or that a utility provides wastewater service that adversely
 190 affects customers due to odor, noise, aerosol drift, or
 191 lighting, the utility shall provide estimates of the costs and
 192 benefits of various solutions to the problems. The utility must
 193 meet with its customers to discuss the costs and benefits of the
 194 various solutions and report to the commission the conclusions
 195 of the meetings. The commission shall adopt rules necessary to
 196 assess and enforce the utility's compliance with this section.
 197 The rules must prescribe penalties, including fines and
 198 reduction of return on equity of up to 100 basis points, if a
 199 utility fails to adequately address or offer solutions to the
 200 water or wastewater problems.

201

202 Notwithstanding ~~the provisions of~~ this paragraph, the commission
 203 shall approve rates for service which allow a utility to recover
 204 from customers the full amount of environmental compliance
 205 costs. Such rates may not include charges for allowances for
 206 funds prudently invested or similar charges. For purposes of
 207 this requirement, the term "environmental compliance costs"
 208 includes all reasonable expenses and fair return on any prudent

209 investment incurred by a utility in complying with the
 210 requirements or conditions contained in any permitting,
 211 enforcement, or similar decisions of the United States
 212 Environmental Protection Agency, the Department of Environmental
 213 Protection, a water management district, or any other
 214 governmental entity with similar regulatory jurisdiction.

215 (b) In establishing initial rates for a utility, the
 216 commission may project the financial and operational data as set
 217 out in paragraph (a) to a point in time when the utility is
 218 expected to be operating at a reasonable level of capacity.

219 (c) In establishing rates for a utility, the commission
 220 may authorize the creation of a utility reserve fund. The
 221 commission shall adopt rules to govern the fund, including, but
 222 not limited to, rules relating to expenses for which the fund
 223 may be used, segregation of reserve account funds, requirements
 224 for a capital improvement plan, and requirements for commission
 225 authorization before disbursements from the reserve fund.

226 (4) (a) On or before March 31 of each year, the commission
 227 by order shall establish a price increase or decrease index for
 228 major categories of operating costs incurred by utilities
 229 subject to its jurisdiction reflecting the percentage of
 230 increase or decrease in such costs from the most recent 12-month
 231 historical data available. The commission by rule shall
 232 establish the procedure to be used in determining such indices
 233 and a procedure by which a utility, without further action by
 234 the commission, or the commission on its own motion, may

235 implement an increase or decrease in its rates based upon the
 236 application of the indices to the amount of the major categories
 237 of operating costs incurred by the utility during the
 238 immediately preceding calendar year, except to the extent of any
 239 disallowances or adjustments for those expenses of that utility
 240 in its most recent rate proceeding before the commission. The
 241 rules shall provide that, upon a finding of good cause,
 242 including inadequate service, the commission may order a utility
 243 to refrain from implementing a rate increase hereunder unless
 244 implemented under a bond or corporate undertaking in the same
 245 manner as interim rates may be implemented under s. 367.082. A
 246 utility may not use this procedure between the official filing
 247 date of the rate proceeding and 1 year thereafter, unless the
 248 case is completed or terminated at an earlier date. A utility
 249 may not use this procedure to increase any operating cost for
 250 which an adjustment has been or could be made under paragraph
 251 (b), or to increase its rates by application of a price index
 252 other than the most recent price index authorized by the
 253 commission at the time of filing.

254 (b) Upon verified notice to the commission 45 days before
 255 implementation of the increase or decrease, and without a
 256 hearing, the approved rates of a utility must automatically
 257 increase or decrease. Such notice must inform the commission
 258 that the utility's costs for a specified expense item have
 259 changed.

260 1. The new rates must reflect, on an amortized or annual

261 basis, as appropriate, the cost or amount of change in the cost
 262 of the specified expense item. The new rates may not reflect the
 263 costs of a specified expense item already included in the rates
 264 of a utility. Specified expense items eligible for automatic
 265 increase or decrease of a utility's rates include, but are not
 266 limited to:

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

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

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

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

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

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

281 g. The fees charged for wastewater sludge disposal.

282 h. A loan service fee or loan origination fee associated
 283 with a loan related to an eligible project. The commission shall
 284 adopt rules governing the determination of eligible projects,
 285 which must be limited to those projects associated with new
 286 infrastructure or improvements to existing infrastructure needed

287 to achieve or maintain compliance with federal, state, and local
 288 governmental primary or secondary drinking water standards or
 289 wastewater treatment standards that relate to:

290 (I) The provision of water or wastewater service for
 291 existing customers;

292 (II) The violation or prevention of a violation of
 293 federal, state, and local governmental primary or secondary
 294 health standards;

295 (III) The replacement or upgrade of aging water or
 296 wastewater infrastructure if needed to achieve or maintain
 297 compliance with federal, state, and local governmental primary
 298 or secondary regulations; or

299 (IV) Projects consistent with the most recent long-range
 300 plan of the utility on file with the commission. Eligible
 301 projects do not include projects primarily intended to serve
 302 future growth.

303 i. Costs incurred for a tank inspection required by the
 304 Department of Environmental Protection or a local governmental
 305 authority.

306 j. Operator and distribution license fees required by the
 307 Department of Environmental Protection or a local governmental
 308 authority.

309 k. Water or wastewater operating permit fees charged by
 310 the Department of Environmental Protection or a local
 311 governmental authority.

312 l. Consumptive or water use permit fees charged by a water

313 management district.

314 2. A utility may not use the procedure under this
 315 paragraph to increase or decrease its rates as a result of an
 316 increase or decrease in a specific expense item which occurred
 317 more than 12 months before the filing by the utility.

318 3. The commission may establish by rule additional
 319 specific expense items that cause an automatic increase or
 320 decrease in a utility's rates as provided in this paragraph. To
 321 be eligible for such treatment, an additional expense item must
 322 be imposed upon the utility by a local, state, or federal law,
 323 rule, order, or notice and must be outside the control of the
 324 utility. If the commission exercises its authority to establish
 325 such rule, the commission must, at least once every 5 years,
 326 review the rule and determine if each expense item should
 327 continue to be cause for the automatic increase or decrease of a
 328 utility's rates, or if any additional items should become cause
 329 for the automatic increase or decrease of a utility's rates as
 330 provided in this paragraph ~~The approved rates of any utility~~
 331 ~~which receives all or any portion of its utility service from a~~
 332 ~~governmental authority or from a water or wastewater utility~~
 333 ~~regulated by the commission and which redistributes that service~~
 334 ~~to its utility customers shall be automatically increased or~~
 335 ~~decreased without hearing, upon verified notice to the~~
 336 ~~commission 45 days prior to its implementation of the increase~~
 337 ~~or decrease that the rates charged by the governmental authority~~
 338 ~~or other utility have changed. The approved rates of any utility~~

339 ~~which is subject to an increase or decrease in the rates or fees~~
 340 ~~that it is charged for electric power, the amount of ad valorem~~
 341 ~~taxes assessed against its used and useful property, the fees~~
 342 ~~charged by the Department of Environmental Protection in~~
 343 ~~connection with the National Pollutant Discharge Elimination~~
 344 ~~System Program, or the regulatory assessment fees imposed upon~~
 345 ~~it by the commission shall be increased or decreased by the~~
 346 ~~utility, without action by the commission, upon verified notice~~
 347 ~~to the commission 45 days prior to its implementation of the~~
 348 ~~increase or decrease that the rates charged by the supplier of~~
 349 ~~the electric power or the taxes imposed by the governmental~~
 350 ~~authority, or the regulatory assessment fees imposed upon it by~~
 351 ~~the commission have changed. The new rates authorized shall~~
 352 ~~reflect the amount of the change of the ad valorem taxes or~~
 353 ~~rates imposed upon the utility by the governmental authority,~~
 354 ~~other utility, or supplier of electric power, or the regulatory~~
 355 ~~assessment fees imposed upon it by the commission. The approved~~
 356 ~~rates of any utility shall be automatically increased, without~~
 357 ~~hearing, upon verified notice to the commission 45 days prior to~~
 358 ~~implementation of the increase that costs have been incurred for~~
 359 ~~water quality or wastewater quality testing required by the~~
 360 ~~Department of Environmental Protection. The new rates authorized~~
 361 ~~shall reflect, on an amortized basis, the cost of, or the amount~~
 362 ~~of change in the cost of, required water quality or wastewater~~
 363 ~~quality testing performed by laboratories approved by the~~
 364 ~~Department of Environmental Protection for that purpose. The new~~

365 ~~rates, however, shall not reflect the costs of any required~~
 366 ~~water quality or wastewater quality testing already included in~~
 367 ~~a utility's rates. A utility may not use this procedure to~~
 368 ~~increase its rates as a result of water quality or wastewater~~
 369 ~~quality testing or an increase in the cost of purchased water~~
 370 ~~services, sewer services, or electric power or in assessed ad~~
 371 ~~valorem taxes, which increase was initiated more than 12 months~~
 372 ~~before the filing by the utility.~~

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

376 (c) Before implementing a change in rates under this
 377 subsection, the utility must ~~shall~~ file an affirmation under
 378 oath as to the accuracy of the figures and calculations upon
 379 which the change in rates is based, stating that the change will
 380 not cause the utility to exceed the range of its last authorized
 381 rate of return on equity. A person who ~~Whoever~~ makes a false
 382 statement in the affirmation required under this subsection
 383 ~~hereunder~~, which statement he or she does not believe to be true
 384 in regard to any material matter, commits ~~is guilty of~~ a felony
 385 of the third degree, punishable as provided in s. 775.082, s.
 386 775.083, or s. 775.084.

387 (d) If, within 15 months after the filing of a utility's
 388 annual report required by s. 367.121, the commission finds that
 389 the utility exceeded the range of its last authorized rate of
 390 return on equity after an adjustment in rates as authorized by

391 | this subsection was implemented within the year for which the
 392 | report was filed or was implemented in the preceding year, the
 393 | commission may order the utility to refund, with interest, the
 394 | difference to the ratepayers and adjust rates accordingly. This
 395 | provision does ~~shall not be construed to~~ require a bond or
 396 | corporate undertaking not otherwise required.

397 | (e) Notwithstanding anything in this section ~~herein~~ to the
 398 | contrary, a utility may not adjust its rates under this
 399 | subsection more than two times in any 12-month period. For the
 400 | purpose of this paragraph, a combined application or
 401 | simultaneously filed applications that were filed under the
 402 | provisions of paragraphs (a) and (b) are ~~shall be~~ considered one
 403 | rate adjustment.

404 | (f) At least annually, the commission shall ~~may regularly,~~
 405 | ~~not less often than once each year,~~ establish by order a
 406 | leverage formula or formulae that reasonably reflect the range
 407 | of returns on common equity for an average water or wastewater
 408 | utility and which, for purposes of this section, are ~~shall be~~
 409 | used to calculate the last authorized rate of return on equity
 410 | for a ~~any~~ utility which otherwise would not have an ~~ne~~
 411 | established rate of return on equity. In any other proceeding in
 412 | which an authorized rate of return on equity is to be
 413 | established, a utility, in lieu of presenting evidence on its
 414 | rate of return on common equity, may move the commission to
 415 | adopt the range of rates of return on common equity which is
 416 | ~~that has been~~ established under this paragraph.

417 (7) The commission shall determine the reasonableness of
 418 rate case expenses and shall disallow all rate case expenses
 419 determined to be unreasonable. A ~~No~~ rate case expense determined
 420 to be unreasonable may not be ~~shall be~~ paid by a consumer. In
 421 determining the reasonable level of rate case expense, the
 422 commission shall consider the extent to which a utility has used
 423 ~~utilized~~ or failed to use ~~utilize~~ the provisions of paragraph
 424 (4) (a) or paragraph (4) (b) and such other criteria as it may
 425 establish by rule. In a rate case filed pursuant to this
 426 section, the commission shall not award rate case expenses that
 427 exceed the total rate increase approved by the commission
 428 exclusive of any rate case expense.

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

431 367.0814 Staff assistance in changing rates and charges;
 432 interim rates.—

433 (3) The provisions of s. 367.081(1), (2) (a), (2) (c), and
 434 (3), and (7) shall apply in determining the utility's rates and
 435 charges. However, the commission shall not award rate case
 436 expense to cover fees for attorneys or other outside consultants
 437 who are engaged for purposes of preparing or filing the case if
 438 a utility receives staff assistance in changing rates and
 439 charges pursuant to this section, unless the Office of Public
 440 Counsel or interested parties have intervened. The commission
 441 may award rate case expense for attorney fees or other outside
 442 consultant fees if the fees are incurred for the purpose of

443 providing consulting or legal services to the utility after the
 444 initial staff report is made available to customers and the
 445 utility. If there is a protest or appeal by a party other than
 446 the utility, the commission may award rate case expense to the
 447 utility for attorney fees or other outside consultant fees for
 448 costs incurred after the protest or appeal. The commission shall
 449 adopt rules to administer this subsection.

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

452 367.0816 Recovery of rate case expenses.—

453 (1) The amount of rate case expense determined to be
 454 reasonable by the commission pursuant to s. 367.081 the
 455 ~~provisions of this chapter to be recovered through a public~~
 456 ~~utilities rate shall be apportioned for recovery through the~~
 457 utility's rates over a period of 4 years. At the conclusion of
 458 the recovery period, the rate of the public utility shall be
 459 reduced immediately by the amount of rate case expense
 460 previously included in rates.

461 (2) A utility may recover the 4-year amortized rate case
 462 expense for only one rate case at any given time. If the
 463 commission approves and a utility implements a rate change from
 464 a subsequent rate case pursuant to this section, the utility
 465 forfeits any unamortized rate case expense from a prior rate
 466 case. The unamortized portion of rate case expense for a prior
 467 case must be removed from rates before the implementation of an
 468 additional amortized rate case expense for the most recent rate

469 proceeding. This limitation does not apply to the recovery of
 470 rate case expense for a limited proceeding filed pursuant to s.
 471 367.0822.

472 Section 7. Subsection (3) of section 403.8532, Florida
 473 Statutes, is amended to read:

474 403.8532 Drinking water state revolving loan fund; use;
 475 rules.-

476 (3) The department may make, or request that the
 477 corporation make, loans, grants, and deposits to community water
 478 systems, for-profit privately owned or investor-owned water
 479 systems, nonprofit transient noncommunity water systems, and
 480 nonprofit nontransient noncommunity water systems to assist them
 481 in planning, designing, and constructing public water systems,
 482 ~~unless such public water systems are for profit privately owned~~
 483 ~~or investor-owned systems that regularly serve 1,500 service~~
 484 ~~connections or more within a single certified or franchised~~
 485 ~~area. However, a for profit privately owned or investor-owned~~
 486 ~~public water system that regularly serves 1,500 service~~
 487 ~~connections or more within a single certified or franchised area~~
 488 ~~may qualify for a loan only if the proposed project will result~~
 489 ~~in the consolidation of two or more public water systems.~~ The
 490 department may provide loan guarantees, purchase loan insurance,
 491 and refinance local debt through the issue of new loans for
 492 projects approved by the department. Public water systems may
 493 borrow funds made available pursuant to this section and may
 494 pledge any revenues or other adequate security available to them

495 to repay any funds borrowed.

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

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

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

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

509 Section 8. This act shall take effect July 1, 2014.



Energy & Utilities Subcommittee

Wednesday, February 5, 2014

9:30 AM

Webster Hall (212 Knott)

AMENDMENT PACKET

Will Weatherford
Speaker

Jose Felix Diaz
Chair



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	_____	

1 Committee/Subcommittee hearing bill: Energy & Utilities
2 Subcommittee

3 Representative Santiago offered the following:

4
5 **Amendment (with title amendment)**

6 Between lines 55 and 56, insert:

7 Section 1. Utility Cost Containment Bond Act.-

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

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

11 (a) "Authority" means an entity created pursuant to s.
12 163.01(7)(g) which provides public utility services and whose
13 membership consists of at least three counties. The term
14 includes any successor to the powers and functions of such an
15 entity.

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

18 1. Any part of the expense of constructing, renovating or



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19 acquiring lands, structures, real or personal property, rights,
20 rights-of-way, franchises, easements and interests acquired or
21 used for a utility project.

22 2. The expense of demolishing or removing any buildings or
23 structures on acquired land, including the expense of acquiring
24 any lands to which the buildings or structures may be moved, and
25 the cost of all machinery and equipment used for the demolition
26 or removal.

27 3. Finance charges.

28 4. Interest as determined by the authority.

29 5. Provisions for working capital and debt service
30 reserves.

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

33 7. Expenses for architectural, engineering, financial,
34 accounting and legal services, plans, specifications, estimates,
35 and administration.

36 8. Any other expense necessary or incidental to determining
37 the feasibility of constructing any utility project or
38 incidental to the construction, acquisitions, or financing of
39 any utility project.

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

42 (d) "Financing costs" means any of the following:

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

45 2. The cost of retiring the principal of utility cost
46 containment bonds, whether at maturity, including acceleration



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47 of maturity upon an event of default, or upon redemption,
48 including sinking fund redemption.

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

52 4. A payment or expense associated with a bond insurance
53 policy; financial guaranty; a contract, agreement, or other
54 credit or liquidity enhancement for bonds; or a contract,
55 agreement, or other financial agreement entered into in
56 connection with utility cost containment bonds.

57 5. Any coverage charges.

58 6. The funding of one or more reserve accounts related to
59 utility cost containment bonds.

60 (e) "Finance" or "financing" includes refinancing.

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

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

70 (h) "Local agency" means a member of the authority, or an
71 agency or subdivision of that member, which is sponsoring or
72 refinancing a utility project, or, any municipality, county,
73 authority, special district, public corporation, or other
74 governmental entity of the state that is sponsoring or



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75 refinancing a utility project.

76 (i) "Public utility services" means any of the following
77 services provided by a publicly owned utility:

78 1. Water.

79 2. Wastewater.

80 3. Stormwater.

81 (j) "Publicly owned utility" means a utility furnishing
82 water, wastewater, or stormwater service that is owned and
83 operated by a local agency. The term includes any successor to
84 the powers and functions of such a utility.

85 (k) "Revenue" means income and receipts of the authority
86 from any of the following:

87 1. A bond purchase agreement.

88 2. Bonds acquired by the authority.

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

91 4. Utility projects financed or refinanced by the
92 authority.

93 5. Grants and other sources of income.

94 6. Moneys paid by a local agency.

95 7. Interlocal agreements with a local agency.

96 8. Interest or other income from any investment of any
97 money in any fund or account established for the payment of
98 principal, interest, or premiums on bonds or the deposit of
99 proceeds of utility cost containment bonds.

100 (l) "Utility cost containment bonds" means bonds that are
101 issued by an authority, the proceeds of which are used directly
102 or indirectly to pay or reimburse a local agency or its publicly



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103 owned utility for the costs of a utility project, and that are
104 secured by a pledge of, and are payable from, utility project
105 property. The term includes bonds, notes, commercial paper,
106 variable rate securities, and any other evidence of
107 indebtedness. Utility cost containment bonds may also be used to
108 refinance indebtedness incurred by a local agency to finance or
109 refinance utility projects or to refinance utility cost
110 containment bonds.

111 (m) "Utility project" means the acquisition, construction,
112 installation, retrofitting, rebuilding, or other addition to, or
113 improvement of, any equipment, device, structure, process,
114 facility, technology, rights, or property, located in or outside
115 the state, that is used in connection with the operations of a
116 publicly owned utility.

117 (n) "Utility project property" means the property right
118 created pursuant to subsection (6) including the right, title,
119 and interest of an authority in any of the following:

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

122 2. The financing costs of the utility cost containment
123 bonds and all revenues, and all collections, claims, payments,
124 moneys, or proceeds for, or arising from, the utility project
125 charge.

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

128 (3) UTILITY PROJECTS.—

129 (a) A local agency that owns and operates a publicly owned
130 utility may apply to an authority to finance the costs of a



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131 utility project using the proceeds of utility cost containment
132 bonds. In its application to the authority, the local agency
133 shall specify the utility project to be financed by the utility
134 cost containment bonds, the maximum principal amount, the
135 maximum interest rate, and the maximum stated terms of the
136 utility cost containment bonds.

137 (b) A local agency may not apply to an authority for the
138 financing of a utility project under this section unless the
139 governing body has determined all of the following:

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

141 2. The local agency will finance costs of the utility
142 project and the financing costs associated with the financing
143 will be paid from utility project property, including the
144 utility project charge for the utility cost containment bonds as
145 defined in this part.

146 3. Based on the best information available to the governing
147 body, the rates of the publicly owned utility plus the utility
148 project charge resulting from the financing of the utility
149 project with utility cost containment bonds are expected to be
150 lower on the local agency's retail customers than the rates of
151 the publicly owned utility if the utility project was financed
152 with bonds payable from revenues of the publicly owned utility.

153 (c) A determination by the local agency's governing body
154 that a project to be financed with utility cost containment
155 bonds is a utility project shall be final and conclusive and the
156 utility cost containment bonds issued to finance the utility
157 project and the utility project charge shall be valid and
158 enforceable as set forth in the financing resolution and the

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159 documents relating to the utility cost containment bonds.

160 (d) If a local agency with outstanding utility cost
161 containment bonds ceases to operate a water, wastewater, or
162 stormwater utility, either directly or through its publicly
163 owned utility, references in this section to the local agency or
164 to its publicly owned utility shall be to the successor entity.
165 The successor entity shall assume and perform all obligations of
166 the local agency and its publicly owned utility required by this
167 section and shall assume the servicing agreement required under
168 subsection (4) while the utility cost containment bonds remain
169 outstanding.

170 (4) FINANCING UTILITY PROJECTS.-

171 (a) An authority may finance or refinance utility projects;
172 refinance debt of a local agency previously issued to finance or
173 refinance utility projects, provided such refinancing results in
174 present value savings to the local agency; and issue utility
175 cost containment bonds to refinance previously issued utility
176 cost containment bonds, provided it has received the approval of
177 the local agency.

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

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

182 b. Create a new single-purpose entity by interlocal
183 agreement whose membership shall consist of the authority and
184 two or more of its members or other public agencies.

185 2. A single purpose limited liability company or a single-
186 purpose entity may be created by the authority solely for the



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187 purpose of performing the duties and responsibilities of the
188 authority under this section and shall constitute an authority
189 for all purposes of this section. Reference to the authority in
190 this section includes the company or entity as necessary to
191 implement this act.

192 (b) The governing body of an authority that is financing
193 the costs of a utility project shall adopt a financing
194 resolution and shall impose a utility project charge as
195 described in subsection (5). All provisions of a financing
196 resolution adopted pursuant to this section are binding on the
197 authority.

198 1. The financing resolution must:

199 a. Provide a brief description of the financial calculation
200 method the authority will use to determine the utility project
201 charge. The calculation method shall include a periodic
202 adjustment methodology to be applied at least annually to the
203 utility project charge. The authority shall establish the
204 allocation of utility project charges among customers of the
205 publicly owned utility. Its decision shall be final and
206 conclusive and the financial calculation method for determining
207 the utility project charge and the periodic adjustment
208 methodology may not be changed.

209 b. Require each customer, in the class or classes of
210 customers specified in the financing resolution, who receives
211 water, wastewater, or stormwater service through the publicly
212 owned utility, to pay the utility project charge regardless of
213 whether the customer has an agreement to receive water,
214 wastewater, or stormwater service from a person other than the



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215 publicly owned utility.

216 c. Require a separate charge to the bill of each customer
217 of the publicly owned utility in the class or classes of
218 customers specified in the financing resolution for the utility
219 project charge.

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

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

232 (c) An authority has all the powers provided in this
233 section in addition to the powers provided under s.
234 163.01(7)(g).

235 (5) UTILITY PROJECT CHARGE.-

236 (a) The authority shall impose a sufficient utility project
237 charge based on estimates of water, wastewater, or stormwater
238 service usage, to ensure timely payment of all financing costs
239 with respect to the utility cost containment bonds. The local
240 agency or its publicly owned utility shall provide the authority
241 with information concerning the publicly owned utility that may
242 be required by the authority in establishing the utility project



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243 charge.

244 (b) The utility project charge is a nonbypassable charge to
245 all customers of the publicly owned utility in the class or
246 classes of customers specified in the financing resolution at
247 the time of adoption of the financing resolution as well as all
248 future customers in that class or classes. If a customer of the
249 publicly owned utility that is subject to a utility project
250 charge enters into an agreement to purchase water, wastewater,
251 or stormwater service from an entity other than the publicly
252 owned utility, the customer shall remain liable for the payment
253 of the customer's share of the utility project charge as if the
254 customer had not entered into the agreement. The customer may
255 discharge the liability by continuing to pay the customer's
256 share of the utility project charge as it accrues or by making a
257 one-time payment, as determined by the authority.

258 (c) The authority shall determine whether adjustments to
259 the utility project charge are required at least annually, and
260 at such additional intervals as set forth in the financing
261 resolution and the documents relating to the applicable utility
262 cost containment bonds. The authority shall use the adjustment
263 to correct for any overcollection or undercollection of
264 financing costs from the utility project charge or to make any
265 other adjustment necessary to ensure the timely payment of the
266 financing costs of the utility cost containment bonds, including
267 adjustment of the utility project charge to pay any debt service
268 coverage requirement for the utility cost containment bonds. The
269 local agency or its publicly owned utility shall provide the
270 authority with information concerning the publicly owned utility

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271 that may be required by the authority in adjusting the utility
272 project charge.

273 1. If the authority determines that an adjustment to the
274 utility project charge is required, an adjustment shall be made
275 using the financial calculation methodology set forth in the
276 financing resolution.

277 2. The adjustment may not impose the utility project charge
278 upon classes of customers which were not subject to the utility
279 project charge pursuant to the financing resolution imposing the
280 utility project charge.

281 (d) Revenues from a utility project charge shall be deemed
282 special revenue of the authority and do not constitute revenue
283 of the local agency or its publicly owned utility for any
284 purpose, including, but not limited to, any dedication,
285 commitment, or pledge of revenue, receipts, or other income that
286 the local agency or its publicly owned utility has made or will
287 make for the security of any of its obligations.

288 (e) The local agency or its publicly owned utility shall
289 act as a servicing agent for collecting the utility project
290 charge as long as the servicing agreement remains in effect. The
291 local agency or its publicly owned utility, shall hold the money
292 collected in trust for the exclusive benefit of the persons
293 entitled to the financing costs to be paid from the utility
294 project charge and the moneys shall not lose their character as
295 revenues of the authority by virtue of possession by the local
296 agency or its publicly owned utility.

297 (f) The timely and complete payment of all utility project
298 charges by a person liable for the charges shall be a condition

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299 of receiving water, wastewater, or stormwater service from the
300 publicly owned utility. The local agency or its publicly owned
301 utility may use its established collection policies and remedies
302 provided by law to enforce collection of the utility project
303 charge. A person liable for a utility project charge may not
304 withhold payment, in whole or in part, thereof.

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

311 (6) UTILITY PROJECT PROPERTY.-

312 (a) A utility project charge shall constitute utility
313 project property when a financing resolution authorizing the
314 utility project charge has become effective. The utility project
315 property shall continuously exist as property for all purposes
316 with all of the rights and privileges of this section for the
317 period provided in the financing resolution, but at least until
318 all financing costs with respect to the related utility cost
319 containment bonds are paid in full.

320 (b) Utility project property shall constitute property,
321 including for contracts securing utility cost containment bonds,
322 whether or not the revenues and proceeds arising with respect to
323 the utility project property have accrued.

324 (c) Utility project property shall constitute a current
325 property right.

326 (d) Upon the effective date of the financing resolution,



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327 the utility project property is subject to a first priority
328 statutory lien to secure the payment of the utility cost
329 containment bonds.

330 1. The lien secures the payment of all financing costs,
331 then existing or subsequently arising, to the holders of the
332 utility cost containment bonds, the trustee or representative
333 for the holders of the utility cost containment bonds, and any
334 other entity specified in the financing resolution or the
335 documents relating to the utility cost containment bonds.

336 2. The lien attaches to the utility project property
337 regardless of the current ownership of the utility project
338 property, including any local agency or its publicly owned
339 utility, the authority, or other person.

340 3. The lien is valid and enforceable against the owner of
341 the utility project property and all third parties upon the
342 effectiveness of the financing resolution without any further
343 public notice.

344 4. The lien is a continuously perfected lien on all
345 revenues and proceeds generated from the utility project
346 property, whether or not the revenues or proceeds have accrued.
347 Utility project property shall constitute property for all
348 purposes, including for contracts securing utility cost
349 containment bonds, whether or not the revenues or proceeds
350 arising with respect thereto have accrued.

351 (e) All revenues with respect to utility project property
352 related to utility cost containment bonds, including payments of
353 the utility project charge, shall be applied first to the
354 payment of the financing costs of the utility cost containment



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355 bonds then due, including the funding of reserves for the
356 utility cost containment bonds. Any excess revenues shall be
357 applied as determined by the authority for the benefit of the
358 utility for which the utility cost containment bonds were
359 issued.

360 (7) UTILITY COST CONTAINMENT BONDS.-

361 (a) Utility cost containment bonds shall be within the
362 parameters of the financing set forth by the local agency
363 pursuant to this part in connection with the utility cost
364 containment bonds and the proceeds of the utility cost
365 containment bonds made available to the local agency or its
366 publicly owned utility shall be utilized for the utility project
367 identified in the application for financing of the utility
368 project or utilized to refinance indebtedness of the local
369 agency which financed or refinanced utility projects.

370 (b) Subject to the provisions of this part, utility cost
371 containment bonds shall be issued in accordance with the
372 provisions of s. 163.01(7)(g)8. and may be validated pursuant to
373 s. 163.01(7)(g)9.

374 (c) The authority shall pledge the utility project property
375 as security for the payment of the utility cost containment
376 bonds. All rights of an authority with respect to utility
377 project property pledged as security for the payment of utility
378 cost containment bonds shall be for the benefit of, and
379 enforceable by, the beneficiaries of the pledge to the extent
380 provided in the financing documents relating to the utility cost
381 containment bonds.

382 (d) Utility cost containment bonds shall be nonrecourse to

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383 the credit or any assets of the local agency or the publicly
384 owned utility but shall be payable from, and secured by a pledge
385 of, the utility project property relating to the utility cost
386 containment bonds and any additional security or credit
387 enhancement specified in the documents relating to the utility
388 cost containment bonds. If the authority is financing the
389 project through a single purpose limited liability company
390 pursuant to subsection (4), the utility cost containment bonds
391 shall be payable from, and secured by, a pledge of amounts paid
392 by the company to the authority from the applicable utility
393 project property. This provision shall be the exclusive method
394 of perfecting a pledge of utility project property by the
395 company securing the payment of financing costs under any
396 agreement of the company in connection with the issuance of
397 utility cost containment bonds.

398 (e) If utility project property is pledged as security for
399 the payment of utility cost containment bonds, the local agency
400 or its publicly owned utility must enter into a contract with
401 the authority which shall require, at a minimum, that the
402 publicly owned utility:

403 1. Continue to operate its publicly owned utility,
404 including the utility project that is being financed or
405 refinanced.

406 2. Collect the utility project charge from customers for
407 the benefit and account of the authority and the beneficiaries
408 of the pledge of the utility project charge.

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

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411 (f) The issuance of utility cost containment bonds shall
412 not obligate the state or any political subdivision thereof to
413 levy or to pledge any form of taxation to pay the utility cost
414 containment bonds or to make any appropriation for their
415 payment. All utility cost containment bonds shall contain on
416 their face a statement in substantially the following form:

417

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

421

422 (g) Notwithstanding any other law, any provision of this
423 section, a financing resolution, any other resolution of the
424 authority, or the provisions of the documents relating to
425 utility cost containment bonds, the authority does not have the
426 power or right to rescind, alter, or amend any resolution or
427 document that pledges utility cost charges for payment of
428 utility cost containment bonds.

429

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

435

436 (i) Subject to the terms of the pledge document created
437 under this part, the validity and relative priority of a pledge
438 is not defeated or adversely affected by the commingling of
revenues arising with respect to the utility project property



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439 with other funds of the local agency or the publicly owned
440 utility collecting a utility project charge on behalf of an
441 authority.

442 (j) Financing costs in connection with utility cost
443 containment bonds are a special obligation of the authority and
444 do not constitute a liability of the state or any political
445 subdivision thereof. Financing costs are not a pledge of the
446 full faith and credit of the state or any political subdivision
447 thereof, including the authority, but are payable solely from
448 the funds in the documents relating to the utility cost
449 containment bonds. This provision does not preclude guarantees
450 or credit enhancements in connection with utility cost
451 containment bonds.

452 (k) Except as otherwise provided in this section with
453 respect to adjustments to a utility project charge, the recovery
454 of the financing costs for the utility cost containment bonds
455 from the utility project charge shall be irrevocable and the
456 authority does not have the power, either by rescinding,
457 altering, or amending the applicable financing resolution, to
458 revalue or revise for ratemaking purposes the financing costs of
459 utility cost containment bonds, determine that the financing
460 costs for the related utility cost containment bonds or the
461 utility project charge is unjust or unreasonable, or in any way
462 reduce or impair the value of utility project property that
463 includes the utility project charge, either directly or
464 indirectly. The amount of revenues arising with respect to the
465 financing costs for the related utility cost containment bonds
466 or the utility project charge are not subject to reduction,

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Amendment No. 1

467 impairment, postponement, or termination for any reason until
468 all financing costs to be paid from the utility project charge
469 are fully met and discharged.

470 (1) Except as provided in subsection (5) with respect to
471 adjustments to a utility project charge, the state does hereby
472 pledge and agree with the owners of utility cost containment
473 bonds that the state shall neither limit nor alter the financing
474 costs or the utility project property, including the utility
475 project charge, relating to the utility cost containment bonds,
476 or any rights in, to or under, the utility project property
477 until all financing costs with respect to the utility cost
478 containment bonds are fully met and discharged. This paragraph
479 does not preclude limitation or alteration if and when adequate
480 provision is made by law for the protection of the owners. The
481 authority is authorized to include this pledge by the state in
482 the governing documents for utility cost containment bonds.

483 (8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other
484 law, an authority that issued utility cost containment bonds may
485 not, and no governmental officer or organization shall authorize
486 the authority, to become a debtor under the United States
487 Bankruptcy Code or to become the subject of any similar case or
488 proceedings under any other state or federal law as long as any
489 payment obligation from utility project property remains with
490 respect to the utility cost containment bonds.

491 (9) CONSTRUCTION.—This section and all grants of power and
492 authority in this section shall be liberally construed to
493 effectuate their purposes. All incidental powers necessary to



Amendment No. 1

494 carry into effect the provisions of this section are expressly
495 granted to, and conferred upon, public entities

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

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Remove lines 2-3 and insert:

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An act relating to water supply and management systems; creating

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the Utility Cost Containment Bond Act; creating s. 159.810,

504

F.S.; requiring the

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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	_____	

1 Committee/Subcommittee hearing bill: Energy & Utilities
 2 Subcommittee

3 Representative Santiago offered the following:

4
 5 **Amendment (with title amendment)**

6 Between lines 107 and 108, insert:

7 Section 4. Subsections (7) through (10) are added to
 8 section 367.071, Florida Statutes, to read:

9 367.071 Sale, assignment, or transfer of certificate of
 10 authorization, facilities, or control.-

11 (7) Local government's right of first refusal. -

12 (a) No person, firm, corporation, partnership, association,
 13 or any other non-governmental entity of any kind owning a water
 14 or wastewater utility in this state may sell any such water or
 15 wastewater utility without first notifying the governing body of
 16 the local government in which the majority of its equivalent
 17 residential connections served by the utility are located and



Amendment No. 2

18 offering such local government the right to purchase the
19 utility.

20 (b) A non-governmental owner of a water or wastewater
21 utility desiring to sell its franchise, water system or
22 wastewater system, or facilities located in this state that has
23 received a bona fide offer or acceptance from any potential
24 buyer which is satisfactory to the owner shall notify the local
25 government of the offer or acceptance stating the price, terms,
26 and conditions of sale and provide a copy of the proposed
27 contract of sale together with all exhibits, within 10 days of
28 the receipt of the offer or acceptance.

29 (c) After notification of a bona fide offer or acceptance
30 pursuant to paragraph (b), the local government shall have the
31 right to purchase the franchise, water system or wastewater
32 system or facilities that are the subject of the offer or
33 acceptance at the price, terms and conditions of the bona fide
34 offer or acceptance by executing a contract with the owner
35 within 45 days, unless agreed to otherwise, from the date of
36 receipt of the notice of the offer or acceptance. If the local
37 government fails to execute a contract with the owner within
38 such 45-day period, and the owner does not alter or amend the
39 terms of the bona fide offer or acceptance in negotiating a sale
40 to the local government, or the local government does not adopt
41 a resolution transferring its right of first refusal to a
42 governmental authority created pursuant to chapter 163, then the
43 owner has no further obligations under this subsection.



Amendment No. 2

44 (d) The local government shall have until the later of the
45 closing date set forth in the bona fide offer or acceptance or
46 120 days from the local government's execution of a contract
47 pursuant to paragraph (c) to close the transaction. The contract
48 between the owner and the local government shall be freely
49 assignable by the local government.

50 (e) If the local government does not exercise the right of
51 first refusal granted by this subsection and the owner
52 thereafter offers the franchise, utility, water system or
53 wastewater system on different terms or at a price lower than
54 the price specified in the notice to the local government, the
55 owner shall so notify the local government and provide copies of
56 the proposed contract of sale containing the revised terms and
57 conditions together with all exhibits to the local government
58 within 10 days of the receipt of the received offer. The local
59 government shall have an additional 30 days from the date of the
60 receipt of the notice of the received offer to meet the revised
61 price, terms and conditions by executing the proposed contract.

62 (f) A local government that receives notice of a bona fide
63 offer or acceptance pursuant to paragraph (b) may, by resolution
64 of the governing body of such local government, authorize a
65 governmental authority created by interlocal agreement pursuant
66 to chapter 163 to exercise the local government's right of first
67 refusal granted by this subsection. If the local government
68 adopts a resolution transferring its right of first refusal to a
69 governmental authority, the authority shall be required to act



Amendment No. 2

70 within the time periods specified in this subsection as if the
71 date of the resolution of the local government was the date of
72 notice of the bona fide offer or acceptance.

73 (8) Exceptions to a local government's right of first
74 refusal. - Notwithstanding the provisions of subsection (7), a
75 local government shall not have a right of first refusal under
76 the following circumstances:

77 (a) Any sale or transfer to a person who would be included
78 within the table of descent and distribution if the owner were
79 to die intestate.

80 (b) Any transfer by gift, devise, or operation of law.

81 (c) Any transfer by a partnership to any of its partners.

82 (d) Any conveyance of an interest in a water or wastewater
83 utility's facilities incidental to the financing of capital
84 improvements.

85 (e) A conveyance resulting from the foreclosure of a
86 mortgage, deed of trust, or other instrument encumbering a water
87 or wastewater utility or any deed given in lieu of such
88 foreclosure.

89 (f) Any sale or transfer between or among joint tenants or
90 tenants in common owning a water or wastewater utility.

91 (g) Any purchase of a water or wastewater utility by a
92 governmental authority.

93 (9) Applicability of right of first refusal to multi-
94 jurisdictional utilities and stock purchases. - In the event a
95 person, firm, corporation, partnership, association, or any



Amendment No. 2

96 other non-governmental entity of any kind owning a water or
97 wastewater utility in this state desires to sell to a non-
98 governmental entity a water or wastewater utility located within
99 a local government together with a utility located outside of
100 the same local government, the purchase price to be paid by the
101 local government shall be the price set forth in the contract of
102 sale for such portion of the water or wastewater utility located
103 within the local government. In the absence of an allocation of
104 purchase price in the contract of sale between a utility located
105 in the local government and one located in another local
106 government, the purchase price set forth in the contract of sale
107 shall be allocated by dividing the purchase price by the number
108 of equivalent residential connections currently serviced by the
109 systems to be sold and multiplying the quotient by the number of
110 equivalent residential connections located within the local
111 government. In the event of a proposed stock purchase, the local
112 government shall have the right to purchase the water or
113 wastewater utility located within the local government at a
114 price equal to the purchase price allocation method for a multi-
115 jurisdictional sale plus an allocation of the outstanding debt
116 of the utility. The portion of the outstanding debt to be
117 allocated to the water or wastewater utility to be purchased by
118 the local government shall be determined in the same manner as
119 the purchase price allocation. For the purpose of the
120 allocations required by this subsection, an equivalent
121 residential connection for a water utility shall equal 350

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Amendment No. 2

122 gallons per day, and an equivalent residential connection for a
123 wastewater utility shall equal 280 gallons per day. Together
124 with the notice required in subsection (7), the utility shall
125 provide the local government with the data necessary to
126 determine equivalent residential connections for the purposes of
127 this subsection. The owner of the water or wastewater utility
128 may identify an alternative method for allocating the purchase
129 price to that portion of the utility located within the local
130 government. The local government has sole discretion in
131 determining the acceptability of the owner's alternative method
132 of allocation.

133 (10) Notwithstanding the provisions of s. 367.171,
134 subsections (7) through (9) shall be effective in all counties
135 of this state.

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

142 Remove line 14 and insert:
143 up to a specified cost; amending s. 367.071, F.S.; establishing
144 a right of first refusal for a local government to purchase a
145 non-governmental water or wastewater utility offered for sale
146 when the majority of the equivalent residential connections
147 served by the utility are located within the local government;



Amendment No. 2

148 establishing procedures related to the exercise of the local
149 government's right of first refusal; providing exceptions to the
150 local government's right of first refusal; providing for
151 applicability of the right of first refusal to multi-
152 jurisdictional utilities and stock purchases; providing that the
153 right of first refusal applies in all counties; amending s.
154 367.081, F.S.;



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	_____	

1 Committee/Subcommittee hearing bill: Energy & Utilities
 2 Subcommittee

3 Representative Santiago offered the following:

Amendment (with directory and title amendments)

6 Between lines 225 and 226, insert:

7 (4) For the purpose of determining rate base, the
 8 commission shall not consider a utility's investment in any new
 9 construction, expansion or replacement of a utility's water
 10 treatment plant, wells, wastewater treatment plant or effluent
 11 disposal facilities to be either prudently incurred or used and
 12 useful in the public service unless the utility presents
 13 competent substantial evidence establishing that:

14 (a) The utility notified each government or governmental
 15 authority which owns or operates a utility system within the
 16 same county or an adjoining county wherein the utility intended



Amendment No. 3

17 to construct, expand, or replace such utility property, of its
18 intent to do so;

19 (b) Interconnecting the utility's property with the utility
20 system owned or operated by such local government or
21 governmental authority in lieu of such construction, expansion,
22 or replacement by the utility was cost prohibitive, or otherwise
23 not feasible;

24 (c) The local government or governmental authority was
25 given sufficient information pertaining to the proposed new
26 construction, expansion, or replacement project and the
27 opportunity to provide a competitive bid to the utility on not
28 less than 90-days-notice for the interconnection of the
29 utility's property to the utility system operated by the local
30 government or governmental authority in lieu of such
31 construction, expansion or replacement; and

32 (d) The local government or governmental authority:

33 1. Failed to respond to the utility's notice;

34 2. Agreed with the utility that interconnection of the
35 utility's property was cost prohibitive or otherwise not
36 feasible; or

37 3. Presented a bid for interconnection which was not the
38 least cost alternative available to the utility, and was not
39 preferable to the proposed construction, expansion, or
40 replacement by the utility for public health and safety or
41 environmental reasons.

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Amendment No. 3

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D I R E C T O R Y A M E N D M E N T

Remove lines 108-109 and insert:

Section 4. Subsections (2), (4), and (7) of section 367.081, Florida Statutes, are amended, subsections (4), (5), (6), and (7) are renumbered as subsections (5), (6), (7), (8), and (9), and a new subsection (4) is added to said section, to read:

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

Remove line 23 and insert:

utility; requiring a utility to explore interconnection with a neighboring governmental utility prior to including in rate base its investment in any new construction, expansion, or replacement of water treatment plant, wells, wastewater treatment plant, or effluent disposal facilities; providing for the automatic increase or



Amendment No. 4

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	_____	

1 Committee/Subcommittee hearing bill: Energy & Utilities
 2 Subcommittee
 3 Representative Santiago offered the following:

Amendment (with title amendment)

Between lines 428 and 429, insert:

Section 5. Section 367.0813, Florida Statutes, is amended to read:

367.0813 Gain or loss on purchase or sale, or condemnation by governmental authority.-

(1) In order to provide appropriate incentives to encourage the private sector to participate in the investment in water and wastewater infrastructure, to protect private sector property rights of a utility's shareholders, and to avoid an additional burden of costs placed on ratepayers from the re-allocation of certain costs formerly shared by a divested affiliate and by relitigating this issue, the Legislature affirms and clarifies



Amendment No. 4

18 the clear policy of this state that gains or losses from a
19 purchase or sale, or condemnation of a utility's assets which
20 results in the loss of customers served by such assets and the
21 associated future revenue streams shall be borne by the
22 shareholders of the utility. ~~This section applies to all~~
23 ~~transactions prior to and after the effective date of this~~
24 ~~section.~~

25 (2) Consistent with the policy of this state as expressed
26 in subsection (1), a utility that proportionally allocates to
27 its customers an affiliate's costs for performing operational,
28 administrative or support functions or services on behalf of the
29 utility may not re-allocate to its customers any such costs that
30 had been shared by the utility and a divested affiliate prior to
31 its divestiture.

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33 This section applies to all transactions prior to and after the
34 effective date of this section.

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

Remove line 36 and insert:



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 357 (2014)

Amendment No. 4

42 | case expense under certain circumstances; amending s. 367.0813,
43 | F.S.; prohibiting a utility from reallocating certain shared
44 | costs to customers; amending s.

45



Amendment No. 5

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		

1 Committee/Subcommittee hearing bill: Energy & Utilities
 2 Subcommittee

3 Representative Williams, A. offered the following:

Amendment (with title amendment)

6 Remove line 476 and insert:

7 (3) The department may, consistent with the public
 8 interest, make, or request that the

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

12 Remove line 47 and insert:

13 the Department of Environmental Protection, consistent
 14 with the public interest, to make, or