

Finance and Tax Subcommittee

Thursday, March 13, 2014

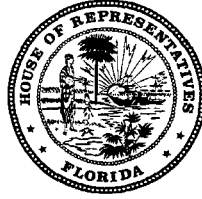
2:00 p.m. – 5:00 p.m.

Morris Hall

MEETING PACKET

The Florida House of Representatives

Finance and Tax Subcommittee



Will Weatherford
Speaker

Ritch Workman
Chair

AGENDA

March 13, 2014
2:00 p.m. – 5:00 p.m.
Morris Hall

- I. Call to Order/Roll Call
- II. Chair's Opening Remarks
- III. **Consideration of the following proposed committee bill(s):**
PCB FTSC 14-04 -- Relating to Motor Vehicle Taxes and Fees
- IV. **Consideration of the following bill(s):**
HB 357 Water and Wastewater Utility Systems by Santiago
HB 377 Educational Facilities Financing by Moraitis
HB 651 Value Adjustment Board Proceedings by Hutson
HB 657 Tax on Insurance Premiums by Davis
- V. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTSC 14-04 Relating to Motor Vehicle and Mobile Home Taxes, Fees and Surcharges
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Flieger <i>BF</i>	Langston <i>AS</i>

SUMMARY ANALYSIS

The bill proposes to reduce certain fees, taxes, and surcharges applied to the licensure of motor vehicles and motor homes as follows:

Type of Fee or Tax	Current Fee	New Fee
Florida Real Time Vehicle Information System Fee s. 320.03(5), F.S.	\$1.25	\$0.50
Registration Service Charge s. 320.04(1)(a), F.S.	\$5.00	\$2.50
Automated Vending Fee s. 320.04(1)(b), F.S.	\$3.00	\$1.00
Retroreflection Material Fee s. 320.06(3)(b), F.S.	\$1.50	\$0.50
License Tax Surcharge s. 320.0804, F.S.	\$4.00	\$1.20
License Tax Surcharge s. 320.08046, F.S.	\$5.50	\$1.00
Section 320.08, F.S., License Taxes		
Motorcycles and Mopeds		
Any motorcycle	\$13.50	\$10.00
Any moped	\$6.75	\$5.00
Ancient or antique	\$8.50	\$7.50
Automobiles and Tri-Vehicles		
Net weight <2500 lbs.	\$19.50	\$14.50
Net weight 2500-3499 lbs.	\$30.50	\$22.50
Net weight ≥3500 lbs.	\$44.00	\$32.50
Ancient, antique, or street rod	\$10.25	\$7.50
Light Trucks		
Net weight <2000 lbs.	\$19.50	\$14.50
Net weight 2000-3000 lbs.	\$30.50	\$22.50
Net weight 3001-5000 lbs.	\$44.00	\$32.50
Trucks defined as "goats"	\$10.25	\$7.50
Ancient or antique	\$10.25	\$7.50

The bill also adjusts the distribution of the \$225 initial registration fee (s. 320.072, F.S.) from the current formula of 44.5 percent to the State Transportation Trust Fund and 55.5 percent to General Revenue to a new formula of 44.5 percent to the State Transportation Trust Fund, 14.3 percent to the Highway Safety Operating Trust Fund, and 41.2 percent to General Revenue.

The Revenue Estimating Conference has not yet heard this bill, but staff estimates that it will have a General Revenue Fund impact of -\$309 million in Fiscal Year 2014-15 (-\$395 million recurring) and an impact to the Highway Safety Operating Trust Fund of \$1.6 million in Fiscal Year 2014-15 (\$0.1 million recurring).

The bill has an effective date of September 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Registration License Fees, Taxes and Surcharges

Motor vehicles and mobile homes must be registered on either an annual or biannual basis in Florida. License taxes for private autos and light trucks range from \$19.50 to \$44.00 according to vehicle weight. A variety of fees and surcharges are applied in addition to the license taxes at the time of registration.

Section 320.03(5), F.S., requires that a fee of \$1.25 be charged on every license registration and deposited in the Highway Safety Operating Trust Fund. Fifty cents of that may be used exclusively to fund the Florida Real Time Vehicle Information (FRTVI) system; the remaining 75 cents may be used to fund general operations of the Department of Highway Safety and Motor Vehicles.

Section 320.04(1)(a), F.S., provides for a registration service charge of \$5 for each application handled in connection with the issuance or transfer of license plates, mobile home stickers, or validation stickers. Of that fee, \$2.50 is deposited into General Revenue; the remainder is retained by the department or tax collector.

Section 320.04(1)(b), F.S., provides that there is also a \$3 fee for the issuance of each validation sticker, vessel decal, and mobile home sticker from an automated vending facility or dispensing machine. Of that fee, \$2 is deposited into General Revenue, the remaining \$1 is held by the tax collector or license tag agent to provide for the operation of automated vending facilities and dispensing machines.

Section 320.06(3)(b), F.S., provides for an additional fee of \$1.50 to be collected on each motor vehicle registration or renewal. Of that, \$1 is deposited into General Revenue and 50 cents are deposited into the Highway Safety Operating Trust Fund (HSOTF) to treat license plates and validation stickers with retroreflection material.

Section 320.0804, F.S., provides for a \$4 surcharge on each license tax imposed under s. 320.08, F.S., except those for mobile homes. From the total fee, \$1 is deposited in the State Transportation Trust Fund, \$1 is deposited in the HSOTF, and \$2 is deposited into General Revenue.

Section 320.08046, F.S., levies an additional \$5.50 surcharge on each license tax imposed under s. 320.08, F.S., except those for mobile homes. From the total fee, \$4.50 is deposited into General Revenue with the remaining \$1 deposited into the Grants and Donations Trust Fund in the Department of Juvenile Justice to fund the juvenile crime prevention programs and the community juvenile justice partnership grants program.

Subsections (1) through (3) of s. 320.08, F.S. provide for a variety of license taxes on motorcycles, mopeds, automobiles, tri-vehicles, and light trucks (see table below). A portion of those fees are deposited into General Revenue, with the remainder distributed pursuant to s. 320.20, F.S.¹

Type of Vehicle	Total Fee	General Revenue Portion
Motorcycles and Mopeds		
Any motorcycle	\$13.50	\$3.50
Any moped	\$6.75	\$1.75
Ancient or antique	\$8.50	\$3.50
Automobiles and Tri-Vehicles		
Net weight <2500 lbs.	\$19.50	\$5.00
Net weight 2500-3499 lbs.	\$30.50	\$8.00
Net weight ≥3500 lbs.	\$44.00	\$11.50
Ancient, antique, or street rod	\$10.25	\$2.75
Light Trucks		
Net weight <2000 lbs.	\$19.50	\$5.00
Net weight 2000-3000 lbs.	\$30.50	\$8.00
Net weight 3001-5000 lbs.	\$44.00	\$11.50
Trucks defined as "goats" ²	\$10.25	\$2.75
Ancient or antique	\$10.25	\$2.75

License Plates

Sections 320.06 and 320.0607, F.S., provide that license plates for vehicle identification shall be issued for a 10-year period with an initial fee of \$28. The fee for replacement of the plate after that 10-year period, also \$28, is paid at the time of registration renewal in 10 annual increments of \$2.80 credited towards the total. The revenue from these fees is deposited in the HSOTF.

Initial Application Fee Distribution

A fee of \$225 is imposed upon the initial application for registration of automobiles, light trucks, motor homes, and truck campers³. Section 320.072(4), F.S., provides that 44.5 percent of that fee is deposited in the State Transportation Trust Fund (STTF), with the remaining 55.5 percent deposited into General Revenue.

¹ The proceeds are first deposited in the district Capital Outlay and Debt Service School Trust Fund to comply with the provisions of s. 9(d), Art. XII, of the Florida Constitution. The remainder is deposited in the State Transportation Trust Fund to fund a variety of purposes.

² A "goat" is a motor vehicle designed, constructed, and used principally for the transportation of citrus fruit within citrus groves or for the transportation of crops on farms, and which can also be used for the hauling of associated equipment or supplies, including required sanitary equipment, and the towing of farm trailers.

³ Also known as the "new wheels on the road" fee

Proposed Changes

Registration License Fees, Taxes and Surcharges

The bill proposes to reduce the fees, taxes, and surcharges described above as follows:

Type of Fee or Tax	Current Fee	Current GR portion	New Fee	New GR portion
Florida Real Time Vehicle Information System Fee s. 320.03(5), F.S.	\$1.25	\$0	\$0.50	\$0
Registration Service Charge s. 320.04(1)(a), F.S.	\$5.00	\$2.50	\$2.50	\$0
Automated Vending Fee s. 320.04(1)(b), F.S.	\$3.00	\$2.00	\$1.00	\$0
Retroreflection Material Fee s. 320.06(3)(b), F.S.	\$1.50	\$1.00	\$0.50	\$0
License Tax Surcharge s. 320.0804, F.S.	\$4.00	\$2.00	\$1.20	\$0
License Tax Surcharge s. 320.08046, F.S.	\$5.50	\$4.50	\$1.00	\$0
Section 320.08 License Taxes				
Motorcycles and Mopeds				
Any motorcycle	\$13.50	\$3.50	\$10.00	\$0
Any moped	\$6.75	\$1.75	\$5.00	\$0
Ancient or antique	\$8.50	\$3.50	\$7.50	\$2.50
Automobiles and Tri-Vehicles				
Net weight <2500 lbs.	\$19.50	\$5.00	\$14.50	\$0
Net weight 2500-3499 lbs.	\$30.50	\$8.00	\$22.50	\$0
Net weight ≥3500 lbs.	\$44.00	\$11.50	\$32.50	\$0
Ancient, antique, or street rod	\$10.25	\$2.75	\$7.50	\$0
Light Trucks				
Net weight <2000 lbs.	\$19.50	\$5.00	\$14.50	\$0
Net weight 2000-3000 lbs.	\$30.50	\$8.00	\$22.50	\$0
Net weight 3001-5000 lbs.	\$44.00	\$11.50	\$32.50	\$0
Trucks defined as "goats"	\$10.25	\$2.75	\$7.50	\$0
Ancient or antique truck	\$10.25	\$2.75	\$7.50	\$0

With the exception of the reduction in the Florida Real Time Information System fee and 80 cents of the reduction in the surcharge imposed by s. 320.0804, F.S., both of which would otherwise be deposited in the HSOTF, the reduction in fees in the chart above exclusively affects funds currently deposited into General Revenue.

License Plates

The bill provides that to retain the efficient administration of the taxes and fees imposed by Chapter 320, F.S., the 80 cent increase in license plate replacement fees enacted by ch. 2009-71, L.O.F., is negated by the reduction in the HSOTF portion of the surcharge imposed by s. 320.0804, F.S.

Initial Application Fee Distribution

The bill provides an adjustment to the distribution of the \$225 initial registration fee. From the revenue, 44.5 percent will be deposited to the State Transportation Trust Fund, 14.3 percent to the HSOTF, and 41.2 percent into General Revenue.

The bill also provides that the revenue from biennial license taxes, fees, and surcharges collected pursuant to s. 320.07, F.S., shall be distributed in accord with the provisions of law in effect at the time they are collected. Also, the bill clarifies that the amendments made by the act do not create a right to a refund of fees, taxes and surcharges collected prior to September 1, 2014 for biennial registrations.

The bill has an effective date of September 1, 2014.

B. SECTION DIRECTORY:

- Section 1. Amending s. 320.03, F.S., reducing the Florida Real Time Vehicle Information fee.
- Section 2. Amending s. 320.04, F.S., reducing registration service charges.
- Section 3. Amending s. 320.06, F.S., reducing a retroreflection material fee and providing that a fee increase is negated elsewhere.
- Section 4. Amending s. 320.072, F.S., providing for the disposition of funds collected from the initial registration fee.
- Section 5. Amending s. 320.08, F.S., reducing various license taxes.
- Section 6. Amending s. 320.0804, F.S., reducing a license tax surcharge.
- Section 7. Amending s. 320.08046, F.S., reducing a license tax surcharge.
- Section 8. Clarifying the treatment of biennial registration fees collected before September 1, 2014.
- Section 9. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not yet heard this bill, but staff estimates that it will have a General Revenue Fund impact of -\$309 million in Fiscal Year 2014-15 (-\$395 million recurring) and an impact to the Highway Safety Operating Trust Fund of \$1.6 million in Fiscal Year 2014-15 (\$0.1 million recurring).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce the taxes, fees, and surcharges paid by any Floridian who registers a motor vehicle or mobile home.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

PCB FTSC 14-04

2014

1 A bill to be entitled
 2 An act relating to motor vehicle and mobile home
 3 taxes, fees, and surcharges; amending ss. 320.03,
 4 320.04, 320.06, 320.072, 320.08, 320.0804, and
 5 320.08046, F.S.; reducing taxes, fees, and other
 6 charges for motor vehicle and mobile home registration
 7 and license plates; revising the disposition of such
 8 taxes, fees, and charges collected; providing
 9 applicability; providing that changes made by the act
 10 do not create a right to a refund of collections
 11 before a specified date; providing an effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (5) of section 320.03, Florida
 16 Statutes, is amended to read:

17 320.03 Registration; duties of tax collectors;
 18 International Registration Plan.—

19 (5) A fee of \$0.50 ~~\$1.25~~ shall be charged, in addition to
 20 the fees required under s. 320.08, on every license registration
 21 sold to cover the costs of the Florida Real Time Vehicle
 22 Information System. The fees collected shall be deposited
 23 ~~distributed as follows: 75 cents into the Highway Safety~~
 24 ~~Operating Trust Fund, which shall be used to fund the Florida~~
 25 ~~Real Time Vehicle Information system and may be used to fund the~~
 26 ~~general operations of the department, and 50 cents into the~~

27 Highway Safety Operating Trust Fund to be used exclusively to
 28 fund the system. The only use of this ~~latter portion of the fee~~
 29 is to fund the system equipment, software, personnel associated
 30 with the maintenance and programming of the system, and networks
 31 used in the offices of the county tax collectors as agents of
 32 the department and the ancillary technology necessary to
 33 integrate the system with other tax collection systems. The
 34 department shall administer this program upon consultation with
 35 the Florida Tax Collectors, Inc., to ensure that each county tax
 36 collector's office is technologically equipped and functional
 37 for the operation of the Florida Real Time Vehicle Information
 38 System. Any of the designated revenue collected to support
 39 functions of the county tax collectors and not used in a given
 40 year must remain exclusively in the trust fund as a carryover to
 41 the following year.

42 Section 2. Paragraphs (a) and (b) of subsection (1) of
 43 section 320.04, Florida Statutes, are amended to read:

44 320.04 Registration service charge.-

45 (1) (a) There shall be a service charge of \$2.50 ~~\$5~~ for
 46 each application which is handled in connection with original
 47 issuance, duplicate issuance, or transfer of any license plate,
 48 mobile home sticker, or validation sticker or with transfer or
 49 duplicate issuance of any registration certificate. ~~Of That~~
 50 amount, ~~\$2.50 shall be deposited into the General Revenue Fund,~~
 51 ~~and the remainder~~ shall be retained by the department or by the
 52 tax collector, as the case may be, as other fees accruing to

53 those offices.

54 (b) There shall also be a service charge of \$1 ~~\$3~~ for the
 55 issuance of each license plate validation sticker, vessel decal,
 56 and mobile home sticker issued from an automated vending
 57 facility or printer dispenser machine, which is payable to the
 58 department. ~~Of~~ That amount, ~~\$1~~ shall be used to provide for
 59 automated vending facilities or printer dispenser machines used
 60 to dispense such stickers and decals by each tax collector's or
 61 license tag agent's employee. ~~The remaining \$2 shall be~~
 62 ~~deposited into the General Revenue Fund.~~

63 Section 3. Paragraph (b) of subsection (1) and paragraph
 64 (b) of subsection (3) of section 320.06, Florida Statutes, are
 65 amended to read:

66 320.06 Registration certificates, license plates, and
 67 validation stickers generally.-

- 68 (1)
- 69 (b)

70 1. Registration license plates bearing a graphic symbol and
 71 the alphanumeric system of identification shall be issued for a
 72 10-year period. At the end of that 10-year period, upon renewal,
 73 the plate shall be replaced. The department shall extend the
 74 scheduled license plate replacement date from a 6-year period to
 75 a 10-year period. The fee for such replacement is \$28, \$2.80 of
 76 which shall be paid each year before the plate is replaced, to
 77 be credited towards the next \$28 replacement fee. The fees shall
 78 be deposited into the Highway Safety Operating Trust Fund. A

79 credit or refund may not be given for any prior years' payments
 80 of such prorated replacement fee if the plate is replaced or
 81 surrendered before the end of the 10-year period, except that a
 82 credit may be given if a registrant is required by the
 83 department to replace a license plate under s. 320.08056(8)(a).
 84 With each license plate, a validation sticker shall be issued
 85 showing the owner's birth month, license plate number, and the
 86 year of expiration or the appropriate renewal period if the
 87 owner is not a natural person. The validation sticker shall be
 88 placed on the upper right corner of the license plate. Such
 89 license plate and validation sticker shall be issued based on
 90 the applicant's appropriate renewal period. The registration
 91 period is 12 months, the extended registration period is 24
 92 months, and all expirations occur based on the applicant's
 93 appropriate registration period. A vehicle with an apportioned
 94 registration shall be issued an annual license plate and a cab
 95 card that denote the declared gross vehicle weight for each
 96 apportioned jurisdiction in which the vehicle is authorized to
 97 operate.

98 2. To retain the efficient administration of the taxes
 99 and fees imposed by this chapter, the 80 cent increase in the
 100 replacement fee imposed by chapter 2009-71, Laws of Florida, is
 101 negated as provided in s. 320.0804.

102 (3)

103 (b) An additional fee of \$0.50 ~~\$1.50~~ shall be collected on
 104 each motor vehicle registration or motor vehicle renewal

105 registration issued in this state in order for all license
 106 plates and validation stickers to be fully treated with
 107 retroreflection material. ~~Of That amount, \$1 shall be deposited~~
 108 ~~into the General Revenue Fund and 50 cents shall be deposited~~
 109 into the Highway Safety Operating Trust Fund.

110 Section 4. Subsection (4) of section 320.072, Florida
 111 Statutes, is amended to read:

112 320.072 Additional fee imposed on certain motor vehicle
 113 registration transactions.—

114 (4) A tax collector or other authorized agent of the
 115 department shall promptly remit ~~44.5 percent of~~ all moneys
 116 collected pursuant to this section, less any refunds granted
 117 pursuant to subsection (3), to the department. The department
 118 shall deposit 44.5 percent of such moneys ~~to be deposited~~ into
 119 the State Transportation Trust Fund, ~~. The remaining 55.5~~ 14.3
 120 percent shall be deposited into the Highway Safety Operating
 121 Trust Fund, and 41.2 percent shall be deposited into the General
 122 Revenue Fund.

123 Fund.

124 Section 5. Subsections (1), (2), and (3) of section
 125 320.08, Florida Statutes, are amended to read:

126 320.08 License taxes.—Except as otherwise provided herein,
 127 there are hereby levied and imposed annual license taxes for the
 128 operation of motor vehicles, mopeds, motorized bicycles as
 129 defined in s. 316.003(2), tri-vehicles as defined in s. 316.003,
 130 and mobile homes, as defined in s. 320.01, which shall be paid

131 to and collected by the department or its agent upon the
 132 registration or renewal of registration of the following:

133 (1) MOTORCYCLES AND MOPEDS.—

134 (a) Any motorcycle: \$10 ~~\$13.50~~ flat, ~~of which \$3.50 shall~~
 135 ~~be deposited into the General Revenue Fund.~~

136 (b) Any moped: \$5 ~~\$6.75~~ flat, ~~of which \$1.75 shall be~~
 137 ~~deposited into the General Revenue Fund.~~

138 (c) Upon registration of any motorcycle, motor-driven
 139 cycle, or moped, there shall be paid in addition to the license
 140 taxes specified in this subsection a nonrefundable motorcycle
 141 safety education fee ~~in the amount~~ of \$2.50. The proceeds of
 142 such additional fee shall be deposited in the Highway Safety
 143 Operating Trust Fund to fund a motorcycle driver improvement
 144 program implemented pursuant to s. 322.025; the Florida
 145 Motorcycle Safety Education Program established in s. 322.0255,
 146 or the general operations of the department.

147 (d) An ancient or antique motorcycle: \$7.50 ~~\$8.50~~ flat, of
 148 which \$2.50 ~~\$3.50~~ shall be deposited into the General Revenue
 149 Fund.

150 (2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

151 (a) An ancient or antique automobile, as defined in s.
 152 320.086, or a street rod, as defined in s. 320.0863: \$7.50
 153 ~~\$10.25~~ flat, ~~of which \$2.75 shall be deposited into the General~~
 154 ~~Revenue Fund.~~

155 (b) Net weight of less than 2,500 pounds: \$14.50 ~~\$19.50~~
 156 ~~flat, of which \$5 shall be deposited into the General Revenue~~

157 Fund.

158 (c) Net weight of 2,500 pounds or more, but less than
 159 3,500 pounds: \$22.50 ~~\$30.50~~ flat, ~~of which \$8 shall be deposited~~
 160 ~~into the General Revenue Fund.~~

161 (d) Net weight of 3,500 pounds or more: \$32.50 ~~\$44~~ flat,
 162 ~~of which \$11.50 shall be deposited into the General Revenue~~
 163 ~~Fund.~~

164 (3) TRUCKS.—

165 (a) Net weight of less than 2,000 pounds: \$14.50 ~~\$19.50~~
 166 flat, ~~of which \$5 shall be deposited into the General Revenue~~
 167 ~~Fund.~~

168 (b) Net weight of 2,000 pounds or more, but not more than
 169 3,000 pounds: \$22.50 ~~\$30.50~~ flat, ~~of which \$8 shall be deposited~~
 170 ~~into the General Revenue Fund.~~

171 (c) Net weight more than 3,000 pounds, but not more than
 172 5,000 pounds: \$32.50 ~~\$44~~ flat, ~~of which \$11.50 shall be~~
 173 ~~deposited into the General Revenue Fund.~~

174 (d) A truck defined as a "goat," or any other vehicle if
 175 used in the field by a farmer or in the woods for the purpose of
 176 harvesting a crop, including naval stores, during such
 177 harvesting operations, and which is not principally operated
 178 upon the roads of the state: \$7.50 ~~\$10.25~~ flat, ~~of which \$2.75~~
 179 ~~shall be deposited into the General Revenue Fund.~~ A "goat" is a
 180 motor vehicle designed, constructed, and used principally for
 181 the transportation of citrus fruit within citrus groves or for
 182 the transportation of crops on farms, and which can also be used

183 for the hauling of associated equipment or supplies, including
 184 required sanitary equipment, and the towing of farm trailers.

185 (e) An ancient or antique truck, as defined in s. 320.086:
 186 \$7.50 ~~\$10.25~~ flat, ~~of which \$2.75 shall be deposited into the~~
 187 ~~General Revenue Fund.~~

188 Section 6. Section 320.0804, Florida Statutes, is amended
 189 to read:

190 320.0804 Surcharge on license tax; trust funds.—There is
 191 hereby levied ~~and imposed~~ on each license tax imposed under s.
 192 320.08, except those set forth in s. 320.08(11), a surcharge ~~in~~
 193 ~~the amount~~ of \$2, which shall be further reduced to \$1.20 to
 194 negate the license plate replacement increase of 80 cents in
 195 2009 ~~\$4~~, which shall be collected in the same manner as the
 196 license tax. Of this amount, \$1 shall be deposited into the
 197 State Transportation Trust Fund ~~and~~, \$1 20 cents shall be
 198 deposited into the Highway Safety Operating Trust Fund, ~~and \$2~~
 199 ~~shall be deposited into the General Revenue Fund.~~

200 Section 7. Section 320.08046, Florida Statutes, is amended
 201 to read:

202 320.08046 Surcharge on license tax.—There is levied on
 203 each license tax imposed under s. 320.08, except those set forth
 204 in s. 320.08(11), a surcharge ~~in the amount~~ of \$1 ~~\$5.50~~, which
 205 shall be collected in the same manner as the license tax. ~~Of the~~
 206 ~~proceeds of each license tax surcharge, \$4.50 shall be deposited~~
 207 ~~into the General Revenue Fund and \$1 shall be deposited into the~~
 208 Grants and Donations Trust Fund in the Department of Juvenile

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2014

209 Justice to fund the juvenile crime prevention programs and the
 210 community juvenile justice partnership grants program.




211 Section 8. (1) The disposition of the biennial license
 212 taxes, fees, and surcharges collected pursuant to s. 320.07,
 213 Florida Statutes, shall occur according to the provisions of
 214 chapter 320, Florida Statutes, in effect at the time the taxes,
 215 fees, and surcharges are collected.

216 (2) The amendments made by this act do not create a right
 217 to a refund of any taxes, fees, or surcharges collected before
 218 September 1, 2014, for a biennial registration pursuant to s.
 219 320.07, Florida Statutes.

220 Section 9. This act shall take effect September 1, 2014.

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	11 Y, 2 N	Keating	Keating 
2) Finance & Tax Subcommittee		Flieger 	Langston 
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 purchase price of water plus 9 percent or the purchase price of water plus actual costs of meter reading and billing.
- 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 estimated that the sales tax exemption provision will have a negative impact of -\$3.1 million to General Revenue (-\$3.4 million recurring) in Fiscal Year 2014-15, a negative insignificant impact to state trust funds, and an impact on local governments of -\$0.7 million (-\$0.8 million recurring).

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: h0357b.FTSC

DATE: 3/11/2014

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 transverse 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 purchase price of water plus 9 percent or the purchase price of water plus actual costs of meter reading and billing.
- 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: (1) up to 9 percent of the actual purchase price; or (2) 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 an IOU from filing for a rate increase to cover costs that are outweighed by the IOU’s expense in preparing and proceeding with the rate case. In some instances, this may discourage an IOU from filing a necessary rate case, though it may also result in more careful consideration by an IOU of the costs, timing, and need to file a rate case. 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. In some instances, this may discourage an IOU from filing a necessary rate case, though it may also result in more careful consideration by an IOU of the costs, timing, and need to file a rate case.

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

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 or 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 estimated that the sales tax exemption provision will have a negative impact of -\$3.1 million to General Revenue (-\$3.4 million recurring) in Fiscal Year 2014-15, and a negative insignificant impact to state trust funds.

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 estimated that the sales tax exemption provision will have a negative impact on local governments in Fiscal Year 2014-15 of -\$0.7 million (-\$0.8 million recurring).

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:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill reduces the revenue from discretionary sales taxes levied by local governments; however, an exemption may apply as the negative impact to local governments is expected to be insignificant.

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

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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~~

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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 ~~no~~
 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.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 357 (2014)

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: Finance & Tax Subcommittee
2 Representative Santiago offered the following:

3

4 **Amendment (with title amendment)**

5 Remove lines 63-95

6

7

8

9

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

11 Remove lines 8-10 and insert:

12 water and wastewater infrastructure projects;

13

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: Finance & Tax Subcommittee
 2 Representative Santiago offered the following:

Amendment (with title amendment)

Remove lines 195-200 and insert:

6 of the meetings. The commission shall adopt rules necessary to
 7 assess and enforce the utility's compliance with this
 8 subparagraph. The rules must prescribe penalties, including
 9 finances and reduction of return on equity of up to 100 basis
 10 points, if a utility fails to adequately address or offer
 11 solutions to the water or wastewater problems.

12 6. A utility shall be permitted to recover its prudently
 13 incurred costs and expenses to resolve deficiencies found by the
 14 commission pursuant to this subsection, or found by the
 15 Department of Environmental Protection, related to non-
 16 compliance with secondary water quality standards regarding
 17 taste, odor, color, or corrosiveness, or concerning wastewater

Amendment No. 2

18 service issues related to odor, noise, aerosol drift, or
 19 lighting. Such costs shall be recoverable through a rate case
 20 filed pursuant to s. 367.081 or through a separate proceeding
 21 initiated by petition of the utility. In its filing, the utility
 22 must describe the activities proposed or undertaken and the
 23 costs projected or incurred to resolve the deficiencies found by
 24 the commission or department. Such costs may be a result of
 25 action agreed upon by the utility and the commission or
 26 department or as a consequence of a consent order.

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

Remove line 21 and insert:

that include fines; providing for recovery of costs prudently
 incurred by a utility to address certain findings of the
 commission or the Department of Environmental Protection;
 authorizing the commission to

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: Finance & Tax Subcommittee
 2 Representative Santiago offered the following:

Amendment (with title amendment)

Remove line 417 and insert:

6 (7) A water utility may file tariffs establishing a
 7 surcharge, or other method for the automatic adjustment of its
 8 rates, which shall provide for recovery of the prudently
 9 incurred fixed costs (depreciation and pretax return) of certain
 10 system improvement projects, as approved by the commission, that
 11 are completed and placed in service between base rate
 12 proceedings. Such projects shall be for the specific purpose of
 13 achieving compliance with secondary water quality standards
 14 regarding taste, odor, color, or corrosiveness. The commission
 15 shall prescribe the specific procedures to be followed in

Amendment No.3

16 establishing the sliding scale or other automatic adjustment
17 method.

18 (8)(7) The commission shall determine the reasonableness
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T I T L E A M E N D M E N T

Remove line 35 and insert:

the act; authorizing a water utility to establish a surcharge or
other mechanism to recover the prudently incurred fixed costs of
certain system improvement projects approved by the commission;
prohibiting the commission from awarding rate

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: Finance & Tax Subcommittee
 2 Representative Santiago offered the following:

3
 4 **Amendment (with title amendment)**
 5 Remove lines 425-471 and insert:

6 establish by rule.

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

9 367.0814 Staff assistance in changing rates and charges;
 10 interim rates.-

11 (3) The provisions of s. 367.081(1), (2)(a), (2)(c), and
 12 (3), and (7) ~~shall~~ apply in determining the utility's rates and
 13 charges.

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Amendment No. 4

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

Remove lines 35-46 and insert:
the act; amending s. 367.0814, F.S.; conforming a cross-
reference to changes made by the act; amending s. 403.8532,
F.S.; allowing

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 377 Educational Facilities Financing
SPONSOR(S): Moraitis, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 628

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Choice & Innovation Subcommittee	12 Y, 0 N	Beagle	Fudge
2) Finance & Tax Subcommittee		Pewitt <i>DP</i>	Langston <i>LS</i>
3) Education Committee			

SUMMARY ANALYSIS

The Higher Educational Facilities Financing Authority (authority) is a public corporation which assists eligible institutions of higher education in financing and refinancing educational facilities construction. Among other things, the authority may issue tax-exempt or taxable revenue bonds, which are privately financed and not secured by full faith and credit of the state. Financing acquired through the authority may be used for such construction projects as dormitories, parking and student service facilities, administration and academic buildings, libraries, and loans made in anticipation of tuition revenues.

Independent nonprofit colleges or universities which are located in and chartered by the state of Florida; are accredited by the Southern Association of Colleges and Schools (SACS); grant baccalaureate degrees; and are not a state university or community college may participate in educational facilities construction financing through the authority. This includes all 31 institutions belonging to the Independent Colleges and Universities of Florida (ICUF).

The bill renames the "Higher Educational Facilities Financing Authority" as the "Educational Facilities Financing Authority" and adds authorization for private, nonprofit elementary, middle, and secondary schools that are located in and chartered by the state of Florida and accredited by SACS to participate in construction financing through the authority. Accordingly, the term "institution of higher education" is replaced by the terms "educational institution" or "participating institution" throughout Part II of ch. 243, F.S. The bill makes a number of additional nomenclature changes to conform to this expansion of eligibility.

The bill expands the types of projects that the authority may finance by adding:

- Costs for construction of dining halls; student unions; laboratories; research facilities; classrooms; athletic facilities; health care facilities; maintenance, storage, or utility facilities; and related facilities or structures required or useful for the instruction of students, research, or the operation of an educational institution, e.g., parking; and
- Certain purchases of equipment and machinery.

Books, fuel, supplies, or other items which are customarily deemed to be operating costs may not be financed.

The Revenue Estimating Conference met on February 14, 2014, and estimated that the bill would have no impact on state or local revenues.

The bill takes effect July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Higher Educational Facilities Financing Authority (authority) is a public corporation which assists eligible institutions of higher education in financing and refinancing educational facilities construction.¹ Participation in financing through the authority is limited to independent nonprofit colleges or universities which are located in and chartered by the state of Florida; are accredited by the Southern Association of Colleges and Schools (SACS); grant baccalaureate degrees; and are not a state university or community college.² This includes all 31 institutions belonging to the Independent Colleges and Universities of Florida (ICUF).³

Among other things, the authority may issue tax-exempt or taxable revenue bonds; acquire real estate; contract; and execute loans, leases, and other legal instruments.⁴ Bonds issued by the authority are privately financed, are not secured by the full faith and credit of the state, and do not constitute an obligation of the state.⁵ The authority may not enter into a financing agreement with a participating institution unless the institution demonstrates that it is financially responsible and capable of fulfilling its obligations under the agreement.⁶

The authority may only finance such projects as dormitories, parking and student service facilities, administration and academic buildings, libraries, and loans made in anticipation of tuition revenues.⁷ Financing may be provided for project costs related to construction and land acquisition; machinery and equipment; financing charges and interest; provisions for working capital; reserves for principal, interest, and rebate; provisions for extensions, enlargements, additions, and improvements; engineering, financial, and legal services; and construction planning and cost estimating.⁸

Currently, the authority and participating institutions are exempt from taxes or assessments related to a project or any property acquired for a project and any tax on income from those projects. Any bonds issued by the authority, any security for the bonds, the transfer of the bonds, and the income from the bonds (including profit on their sale) and notes, mortgages, security agreements, letters of credit, or other instruments are also exempt from taxation of any kind by the state or any local unit, political subdivision, or other instrumentality of the state. This tax exemption does not apply to income taxes imposed on corporations under ch. 220, F.S.⁹

¹ Part II, ch. 243, F.S.

² Section 243.52(6), F.S. The law defines the terms "institution of higher education" and "participating institution" to be synonymous. See s. 243.52(6) and (7), F.S.

³ See Independent Colleges and Universities of Florida, *About Us*, <http://www.icuf.org/newdevelopment/about-icuf/> (last visited Feb. 3, 2014). ICUF institutions include Adventist University of Health Sciences, Ave Maria University, Barry University, Beacon College, Bethune-Cookman University, Clearwater Christian College, Eckerd College, Edward Waters College, Embry-Riddle Aeronautical University, Everglades University, Flagler College, Florida College, Florida Institute of Technology, Florida Memorial University, Florida Southern College, Hodges University, Jacksonville University, Keiser University, Lynn University, Nova Southeastern University, Palm Beach Atlantic University, Ringling College of Art and Design, Rollins College, St. Leo University, Southeastern University, St. Thomas University, Stetson University, The University of Tampa, University of Miami, Warner University, and Webber International University. Independent Colleges and Universities of Florida, *School Websites*, <http://www.icuf.org/newdevelopment/schools/> (last visited Feb. 3, 2014).

⁴ Section 243.54, F.S.

⁵ Section 243.64, F.S.; Email, Independent Colleges and Universities of Florida, General Counsel (Feb. 3, 2014).

⁶ Section 243.58(2), F.S.

⁷ Section 243.52(3), F.S.

⁸ Section 243.52(4), F.S.

⁹ Section 243.70, F.S.

The authority's board consists of five members appointed by the Governor.¹⁰ The board must submit an annual report regarding its activities to the Governor and presiding officers of each house of the Legislature within two months of the end of its fiscal year.¹¹

Similar opportunities for higher educational facilities construction financing assistance are available through County Higher Educational Facilities Authorities (CHEFFA). However, since codified in 1969, CHEFFAs exist in only seven counties.¹² The Higher Educational Facilities Financing Authority was codified in 2001, in part, to extend such assistance to eligible institutions of higher education located in counties without a CHEFFA.¹³ A more extensive list of projects may be financed through a CHEFFA. Allowable projects include:

- Costs for construction of dormitories or student housing; dining halls; student unions; administration or academic buildings; libraries; laboratories; research facilities; classrooms; athletic facilities; health care facilities; maintenance, storage, or utility facilities; and related facilities or structures required or useful for the instruction of students, research, or the operation of an educational institution, e.g., parking;
- Certain purchases of equipment and machinery; and
- A loan in anticipation of tuition revenues.

Books, fuel, supplies, or other items which are customarily deemed to be operating costs may not be financed through a CHEFFA.¹⁴

Effect of Proposed Changes

The bill renames the "Higher Educational Facilities Financing Authority" as the "Educational Facilities Financing Authority" and adds authorization for private, nonprofit elementary, middle, and secondary schools that are located in and chartered by the state of Florida and accredited by SACS to participate in construction financing through the authority. Accordingly, the term "institution of higher education" is replaced by the terms "educational institution" or "participating institution" throughout Part II of ch. 243, F.S. Under the bill, the term "chartered by the state" refers to the private school's incorporation status with the state, and not status as a charter school. Charter schools are public schools and the charter, in that context, is a performance contract with its sponsor, typically a district school board.

The bill replaces the definition of "project" currently applicable to financing of construction projects through the authority with the broader definition currently applicable to CHEFFAs. Thus, allowable projects are expanded to add:

- Costs for construction of dining halls; student unions; laboratories; research facilities; classrooms; athletic facilities; health care facilities; maintenance, storage, or utility facilities; and related facilities or structures required or useful for the instruction of students, research, or the operation of an educational institution, e.g., parking; and
- Certain purchases of equipment and machinery.

Books, fuel, supplies, or other items which are customarily deemed to be operating costs may not be financed through the authority.

Private schools that qualify to participate in construction financing through the authority will be eligible for the tax exemptions currently available to eligible institutions. Additionally, the bill extends the

¹⁰ Section 243.53(2), F.S.

¹¹ Section 243.73(1), F.S.

¹² Chapter 69-345, L.O.F., *codified as* Part I, ch. 243, F.S.; Email, Independent Colleges and Universities of Florida, General Counsel (Feb. 3, 2014).

¹³ Chapter 2001-79, L.O.F.

¹⁴ Section 243.20(5), F.S.

deadline for the authority's annual report from two months to four months after the end of the fiscal year.

B. SECTION DIRECTORY:

Section 1. Renames ch. 243, F.S., as "Educational Facilities Bonds" and Part II of ch. 243, F.S., as "Educational facilities financing."

Section 2. Amends s. 243.50, F.S., relating to Short title.

Section 3. Amends s. 243.51, F.S., relating to Findings and declarations.

Section 4. Amends s. 243.52, F.S., relating to Definitions.

Section 5. Amends s. 243.53, F.S., relating to Creation of Higher Educational Facilities Financing Authority.

Section 6. Amends s. 243.54, F.S., relating to Powers of the authority.

Section 7. Amends s. 243.59, F.S., relating to Approval required to issue bonds.

Section 8. Amends s. 243.66, F.S., relating to Payment of bonds.

Section 9. Amends s. 243.67, F.S., relating to Rates, rents, fees, and charges.

Section 10. Amends s. 243.73, F.S., relating to Reports; audits.

Section 11. 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 met on February 14, 2014, and estimated that the bill would have no impact on state revenues.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill extends opportunities to participate in tax-exempt educational facilities construction financing to private, nonprofit, SACS accredited elementary, middle, and secondary schools. This will likely reduce

costs incurred for construction and financing; however, the amount of the reduction is indeterminate. See Fiscal Comments.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to educational facilities financing;
3 renaming chapter 243, F.S., and part II thereof to
4 conform to changes made by the act; amending ss.
5 243.50, 243.51, 243.52, 243.53, 243.54, 243.59,
6 243.66, 243.67, and 243.73, F.S.; revising provisions
7 relating to the financing of independent nonprofit
8 higher educational facilities to include financing for
9 private nonprofit elementary, middle, and secondary
10 schools meeting certain criteria; revising the short
11 title and findings to conform; revising definitions;
12 renaming the facilities financing authority to
13 conform; revising powers of the authority, including
14 the issuance and payment of bonds, to conform;
15 revising the date for submission of an annual
16 financial report by the authority to the Governor and
17 Legislature; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Chapter 243, Florida Statutes, entitled "Higher
22 Educational Facilities Bonds," is renamed "Educational
23 Facilities Bonds." Part II of that chapter, entitled "Higher
24 Educational Facilities Financing," is renamed "Educational
25 Facilities Financing."

26 Section 2. Section 243.50, Florida Statutes, is amended to

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27 read:

28 243.50 Short title.—Sections 243.50-243.77 may be cited as
 29 the "~~Higher~~ Educational Facilities Financing Act."

30 Section 3. Section 243.51, Florida Statutes, is amended to
 31 read:

32 243.51 Findings and declarations.—It is the purpose of ss.
 33 243.50-243.77 to provide a measure of assistance and an
 34 alternative method enabling private educational institutions in
 35 ~~of higher education of~~ this state to provide the facilities and
 36 structures that they need and to enable those institutions to
 37 coordinate their budgetary needs with the timing of receipt of
 38 tuition revenues.

39 Section 4. Subsections (3) through (8) of section 243.52,
 40 Florida Statutes, are amended to read:

41 243.52 Definitions.—As used in ss. 243.50-243.77, the
 42 term:

43 (3) "Project" means a structure suitable for use as a
 44 dormitory or other housing facility, dining hall, student union,
 45 administration building, academic building, library, laboratory,
 46 research facility, classroom, athletic facility, health care
 47 facility, or maintenance, storage, or utility facility, and
 48 other structures or facilities related thereto, or required
 49 thereto, or required or useful for the instruction of students,
 50 or the conducting of research, or the operation of an
 51 educational institution, including parking and other facilities
 52 or structures, essential or convenient for the orderly conduct

53 of such institution and includes equipment and machinery and
 54 other similar items necessary or convenient for the operation of
 55 a particular facility or structure in the manner for which its
 56 use is intended but does not include such items as books, fuel,
 57 supplies, or other items that are customarily deemed to result
 58 in a current operating charge. The term also ~~dermitory, student~~
 59 ~~service facility, parking facility, administration building,~~
 60 ~~academic building, or library~~ and includes a loan in
 61 anticipation of tuition revenues by an educational institution
 62 ~~of higher education,~~ as defined in subsection (6).

63 (4) "Cost," as applied to a project or any portion thereof
 64 financed under ss. 243.50-243.77, includes all or any part of
 65 the cost of construction and acquisition of all lands,
 66 structures, real property, rights, rights-of-way, franchises,
 67 easements, and interests acquired or used for a project; the
 68 cost of demolishing or removing any buildings or structures on
 69 land so acquired, including the cost of acquiring any lands to
 70 which the buildings or structures may be removed; the cost of
 71 all machinery and equipment, financing charges, and interest
 72 before, during, and for a period of 30 months after completion
 73 of the construction; provisions for working capital, reserves
 74 for principal, interest, and rebate; provisions for extensions,
 75 enlargements, additions, and improvements; the cost of
 76 engineering, financial, and legal services; the cost of plans,
 77 specifications, studies, surveys, estimates of costs and
 78 revenues, administrative expenses, and expenses necessary to

79 determining the feasibility or practicability of constructing
 80 the project; and other expenses necessary for constructing and
 81 acquiring the project, financing the construction, and placing
 82 the project in operation. In the case of a loan in anticipation
 83 of tuition revenues, the term "cost" means the amount of the
 84 loan in anticipation of revenues which does not exceed the
 85 amount of tuition revenues anticipated to be received by the
 86 borrowing institution ~~of higher education~~ in the 1-year period
 87 following the date of the loan, plus costs related to the
 88 issuance of the loan, or the amount of the bonds, the proceeds
 89 of which fund the loans and any related cost of debt service,
 90 reserve funds, and rebate associated therewith.

91 (5) "Bond" or "revenue bond" means a revenue bond of the
 92 authority issued under ss. 243.50-243.77, including a revenue
 93 refunding bond, notwithstanding that it may be secured by
 94 mortgage or the full faith and credit of a participating
 95 institution ~~of higher education~~ or any other lawfully pledged
 96 security of a participating institution ~~of higher education~~.

97 (6) "Educational institution of higher education" means:

98 (a) An independent nonprofit college or university that
 99 ~~which~~ is located in and chartered by the state; that ~~which~~ is
 100 accredited by the Commission on Colleges of the Southern
 101 Association of Colleges and Schools; that ~~which~~ grants
 102 baccalaureate degrees; and that ~~which~~ is not a state university
 103 or Florida College System institution ~~state community college~~.

104 (b) A private nonprofit elementary, middle, or secondary

105 school that is located in and chartered by the state and
 106 accredited by the Southern Association of Colleges and Schools.

107 (7) "Participating institution" means an educational
 108 ~~institution of higher education,~~ as defined in subsection (6),
 109 that undertakes the financing and construction or acquisition of
 110 a project or undertakes the refunding or refinancing of
 111 obligations or of a mortgage or of advances as provided in and
 112 permitted by ss. 243.50-243.77.

113 (8) "Loan in anticipation of tuition revenues" means a
 114 loan to a participating ~~an institution of higher education~~ under
 115 circumstances in which tuition revenues anticipated to be
 116 received by the institution in any budget year are estimated to
 117 be insufficient at any time during the budget year to pay the
 118 operating expenses or other obligations of the institution in
 119 accordance with the budget of the institution.

120 Section 5. Subsections (1) and (2) of section 243.53,
 121 Florida Statutes, are amended to read:

122 243.53 Creation of ~~Higher~~ Educational Facilities Financing
 123 Authority.-

124 (1) There is created a public body corporate and politic
 125 to be known as the ~~Higher~~ Educational Facilities Financing
 126 Authority. The authority is constituted as a public
 127 instrumentality, and the exercise by the authority of the powers
 128 conferred by ss. 243.50-243.77 is considered to be the
 129 performance of an essential public function. Chapters 119 and
 130 286 apply to the authority.

131 (2) The authority shall consist of five members to be
 132 appointed by the Governor, subject to confirmation by the
 133 Senate. One member shall be a trustee, director, officer, or
 134 employee of a participating ~~an~~ institution ~~of higher~~ education.
 135 Of the members first appointed, one shall serve for 1 year, one
 136 for 2 years, one for 3 years, one for 4 years, and one for 5
 137 years, and in each case until his or her successor is appointed
 138 and has qualified. Thereafter, the Governor shall appoint for
 139 terms of 5 years each a member or members to succeed those whose
 140 terms expire. The Governor shall fill any vacancy for an
 141 unexpired term. A member of the authority is eligible for
 142 reappointment. Any member of the authority may be removed by the
 143 Governor for misfeasance, malfeasance, or willful neglect of
 144 duty. Each member of the authority before entering upon his or
 145 her duties shall take and subscribe to the oath or affirmation
 146 required by the State Constitution. A record of each oath must
 147 be filed in the office of the Department of State and with the
 148 authority.

149 Section 6. Section 243.54, Florida Statutes, is amended to
 150 read:

151 243.54 Powers of the authority.—The purpose of the
 152 authority is to assist participating institutions ~~of higher~~
 153 ~~education~~ in constructing, financing, and refinancing projects
 154 throughout the state, and ~~7~~ for this purpose, the authority may:

155 (1) Exercise all powers granted to corporations under the
 156 Florida Business Corporation Act, chapter 607.

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157 (2) Have perpetual succession as a body politic and
 158 corporate and adopt bylaws for the regulation of its affairs and
 159 the conduct of its business.

160 (3) Adopt an official seal and alter the same at its
 161 pleasure.

162 (4) Maintain an office at any place in the state that it
 163 may designate.

164 (5) Sue and be sued in its own name, and plead and be
 165 impleaded.

166 (6) Make and execute financing agreements, leases, as
 167 lessee or as lessor, contracts, deeds, and other instruments
 168 necessary or convenient in the exercise of the powers and
 169 functions of the authority, including contracts with persons,
 170 firms, corporations, federal and state agencies, and other
 171 authorities, which state agencies and other authorities are
 172 authorized to enter into contracts and otherwise cooperate with
 173 the authority to facilitate the financing, construction,
 174 leasing, or sale of any project or the institution of any
 175 program; engage in sale-leaseback, lease-purchase, lease-
 176 leaseback, or other undertakings and provide for the sale of
 177 certificates of participation incident thereto; and enter into
 178 interlocal agreements in the manner provided in s. 163.01.

179 (7) Determine the location and character of any project to
 180 be financed under ss. 243.50-243.77 and may:

181 (a) Construct, reconstruct, maintain, repair, and lease
 182 the project as lessee or lessor.

183 (b) Enter into contracts for any of those purposes.

184 (c) Designate a participating institution as its agent to
 185 determine the location and character of a project undertaken by
 186 a participating institution under ss. 243.50-243.77 and, as the
 187 agent of the authority, construct, reconstruct, maintain,
 188 repair, own, and lease the project as lessee or lessor.

189 (8) Issue bonds, bond anticipation notes, and other
 190 obligations of the authority for any of its corporate purposes,
 191 including the provision of funds to pay all or any part of the
 192 cost of any project and to fund or refund the cost of any
 193 project as provided in ss. 243.50-243.77.

194 (9) Establish rules for the use of a project or any
 195 portion thereof and designate a participating institution as its
 196 agent to establish rules for the use of a project undertaken by
 197 the participating institution.

198 (10) Employ consulting engineers, architects, attorneys,
 199 accountants, construction and financial experts,
 200 superintendents, managers, and other employees and agents as
 201 necessary, and fix their compensation.

202 (11) Receive and accept from any public agency loans or
 203 grants for or in aid of the construction of a project or any
 204 portion thereof, and receive and accept loans, grants, aid, or
 205 contributions from any source of money, property, labor, or
 206 other things of value, to be held, used, and applied only for
 207 the purposes for which the loans, grants, aid, and contributions
 208 are made.

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209 (12) Mortgage any project and the site thereof for the
 210 benefit of the holders of revenue bonds issued to finance
 211 projects or those providing credit for that purpose.

212 (13) Make loans to any participating institution for the
 213 cost of a project, including a loan in anticipation of tuition
 214 revenues, in accordance with an agreement between the authority
 215 and the participating institution. However, a loan may not
 216 exceed the total cost of the project as determined by the
 217 participating institution and approved by the authority.

218 (14) Make loans to a participating institution to refund
 219 outstanding obligations, mortgages, or advances issued, made, or
 220 given by the participating institution for the cost of a
 221 project.

222 (15) Charge to and equitably apportion among participating
 223 institutions its administrative costs and expenses incurred in
 224 the exercise of the powers and duties conferred by ss. 243.50-
 225 243.77.

226 (16) Contract with an entity as its agent to assist the
 227 authority in screening applications of participating
 228 institutions ~~of higher education~~ for loans under ss. 243.50-
 229 243.77 and receive any recommendations the entity may make.

230 (17) Do all things necessary or convenient to carry out
 231 the purposes of ss. 243.50-243.77.

232 Section 7. Section 243.59, Florida Statutes, is amended to
 233 read:

234 243.59 Approval required to issue bonds.—The authority is

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235 created for the purpose of promoting private nonprofit ~~higher~~
 236 education and issuing bonds on behalf of the state, and the
 237 Governor may approve any bonds issued by the authority which
 238 require approval under federal law.

239 Section 8. Section 243.66, Florida Statutes, is amended to
 240 read:

241 243.66 Payment of bonds.—Revenue bonds issued under ss.
 242 243.50-243.77 are not a debt or liability of the authority, any
 243 municipality, the state, or any political subdivision thereof,
 244 and are not a pledge of the faith and credit of the state, the
 245 authority, any municipality, or any political subdivision
 246 thereof, but are payable solely from revenues of the authority
 247 pertaining to the project relating to the issue; payments by
 248 participating institutions ~~of higher education~~, banks, insurance
 249 companies, or others under letters of credit or purchase
 250 agreements; investment earnings from funds or accounts
 251 maintained under the bond resolution; insurance proceeds; loan
 252 funding deposits; proceeds of sales of education loans; proceeds
 253 of refunding obligations; and fees, charges, and other revenues
 254 of the authority from the project. All revenue bonds must
 255 contain on the face thereof a statement to the effect that
 256 neither the authority nor any municipality, the state, or any
 257 political subdivision thereof is obligated to pay the bond or
 258 the interest thereon except from revenues of the project or the
 259 portion thereof for which they are issued, and that neither the
 260 faith and credit nor the taxing power of the authority, any

261 municipality, the state, or any political subdivision thereof is
 262 pledged to the payment of the principal of or the interest on
 263 the bonds. The issuance of revenue bonds under ss. 243.50-243.77
 264 may not directly, indirectly, or contingently obligate the
 265 authority, any municipality, the state, or any political
 266 subdivision thereof to levy or to pledge any form of taxation
 267 therefor or to make any appropriation for their payment.

268 Section 9. Subsection (3) of section 243.67, Florida
 269 Statutes, is amended to read:

270 243.67 Rates, rents, fees, and charges.—

271 (3) The use and disposition of moneys to the credit of a
 272 sinking or other similar fund must be subject to the resolution
 273 authorizing the issuance of the bonds or of the trust agreement.
 274 Except as otherwise provided in the resolution or the trust
 275 agreement, the sinking or other similar fund must be a fund for
 276 all revenue bonds issued to finance projects at a particular
 277 participating institution ~~of higher education~~ without
 278 distinction or priority of one over another. However, the
 279 authority in any resolution or trust agreement may provide that
 280 the sinking or other similar fund be the fund for a particular
 281 project at a participating institution and for payment of the
 282 revenue bonds issued to finance that project, and may,
 283 additionally, permit and provide for the issuance of revenue
 284 bonds having a subordinate lien in respect of the security
 285 authorized to other revenue bonds of the authority, and, in such
 286 case, the authority may create separate sinking or other similar

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287 funds in respect of the subordinate lien bonds.

288 Section 10. Subsection (1) of section 243.73, Florida
 289 Statutes, is amended to read:

290 243.73 Reports; audits.—

291 (1) The authority shall submit to the Governor and the
 292 presiding officers of each house of the Legislature, within 4 ~~2~~
 293 months after the end of its fiscal year, a complete and detailed
 294 report setting forth:

295 (a) Its operations and accomplishments.

296 (b) Its receipts and expenditures during its fiscal year
 297 in accordance with the categories or classifications established
 298 by the authority for its operating and capital outlay purposes.

299 (c) Its assets and liabilities at the end of its fiscal
 300 year and the status of reserve, special, or other funds.

301 (d) A schedule of its bonds outstanding at the end of its
 302 fiscal year, together with a statement of the principal amounts
 303 of bonds issued and redeemed during the fiscal year.

304 (e) Any other information the authority deems appropriate.

305 Section 11. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 651 Value Adjustment Board Proceedings

SPONSOR(S): Hutson

TIED BILLS: **IDEN./SIM. BILLS:** SB 806

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Wolfgang <i>W</i>	Langston <i>DL</i>
2) Local & Federal Affairs Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill makes the following revisions to the process for petitioning the value adjustment board:

- It requires the clerk of the value adjustment board to have available and distribute petition forms (a function already performed by the property appraiser).
- It allows an owner of multiple, similar items of tangible personal property to file a single, joint petition to protest his/her assessments.
- It provides that during the evidence exchange process, the property appraiser must include the property record card regardless of whether the card was provided by the clerk.

The Revenue Estimating Impact Conference estimated that the bill would have a negative, recurring impact on local government fee revenues of \$100,000.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Value Adjustment Boards

Chapter 194, F.S., provides for administrative and judicial review of ad valorem tax assessments. Each county in Florida has a value adjustment board (VAB) composed of five members¹ that reviews appeals of the ad valorem tax decisions made by county property appraisers.² The VAB hears evidence from both petitioners and property appraisers as to whether properties are appraised at their fair market value, as well as issues related to tax exemptions, deferrals, and portability.³

Petition Process for VAB Hearing

Property appraisers establish the value of taxable property as of January 1 each year, and review and apply exemptions, assessment limitations, and classifications that may reduce a property's taxable value.⁴ VABs have no authority to review, by their own motion, the determinations of the property appraiser.⁵ Rather, the property owner files a petition to initiate a review, which may cost up to \$15 per petition.⁶

The Florida Department of Revenue (DOR), in their property tax oversight role, maintains a calendar indicating when the petition process begins (early March), and when petitions must be received by (mid-September), each year.⁷ VAB petitions may be found at the DOR website, the County Property Appraiser's office, and in most counties at the office or website of the VAB Clerk. The clerk of the value adjustment board⁸ is responsible for receiving completed petitions, acknowledging receipt to the taxpayer, sending a copy of the petition to the property appraiser, and scheduling appearances before the value adjustment board.

Prior to the hearing, an exchange of evidence can take place between the petitioner and the property appraiser, if so requested in writing. Regardless of whether petitioners initiate an evidence exchange, the property appraiser is required to provide the property record card to petitioners on receipt of the petition if the petitioner checks the appropriate box on the petition, unless the property record card is available online from the property appraiser.⁹

Filing Fees and Joint Petitions

The cost to file a petition is capped at \$15 by statute.¹⁰ There is no fee for timely-filed petitions appealing homestead exemption denials.¹¹ The VAB waives the filing fee of a petitioner who demonstrates at the time of filing that the petitioner is an eligible recipient of temporary assistance

¹ Section 194.015, F.S.

² Section 194.011, F.S.

³ Additionally, VABs appoint special magistrates, who are qualified real estate appraisers, personal property appraisers or attorneys, to act as impartial agents in conducting hearings and making recommendations on all petitions.

⁴ For timeframes and instructions on filing, see DEP'T OF REVENUE, *PETITIONS TO THE VALUE ADJUSTMENT BOARD*, <http://dor.myflorida.com/dor/property/brochures/pt101.pdf> (last visited March 11, 2014).

⁵ See Chapter 2013-95, ss. 1-4, Laws of Fla. (CS/HB 1193).

⁶ Section 194.013, F.S.

⁷ See the most recent calendar for exact dates. DEP'T OF REVENUE, *VALUE ADJUSTMENT BOARD CALENDAR*, <http://dor.myflorida.com/dor/property/cofficials/pdf/pt902020.pdf> (last visited March 11, 2014).

⁸ The county clerk usually serves as the clerk of the value adjustment board. Section 194.015, F.S.

⁹ Section 194.032(3)(a), F.S.

¹⁰ Section 194.013(1), F.S.

¹¹ Section 194.013(1), F.S.

under ch. 414, s. 194.013(2), F.S.¹² All filing fees are allocated and utilized to defray costs incurred in connection with the operation of the VAB.

Owners of "contiguous, undeveloped parcels" may file a single, joint petition if the Property Appraiser determines such parcels are substantially similar in nature.¹³ Condominium, cooperative, or homeowners' associations may file a single joint petition on behalf of any association members who own parcels of property that the "property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition."¹⁴ A single filing fee for joint petitions is to be charged, and the fee must not exceed \$5 per parcel and is to be proportionately paid by affected parcel owners.

Ad Valorem Taxation – Tangible Personal Property

Local governments may levy ad valorem tax assessments on real property¹⁵ and tangible personal property.¹⁶ Anyone who owns tangible personal property on January 1 and who has a proprietorship, partnership, or corporation, or is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.¹⁷ Property owners who lease, lend or rent property must also file. "Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to \$25,000 of assessed value. A single return must be filed for each site in the county where the owner of tangible personal property transacts business."¹⁸ The requirement to file an annual tangible personal property return is waived for taxpayers if they file an initial return on which the exemption is taken, and the value of the tangible personal property is less than \$25,000.¹⁹ The VAB reviews petitions for tangible personal property assessments using substantially the same procedures as for petitions for real property assessments.²⁰

Proposed changes

The bill makes the following revisions to the administrative appeal process under section 194.011, F.S.:

- The bill specifies that in addition to the property appraiser, the clerk of the value adjustment board shall have available petition forms prescribed by the Department of Revenue.
- The bill allows an owner of multiple items of tangible personal property to file a single joint petition with the VAB if the property appraiser determines that the items of tangible personal property are substantially similar.
- During the evidence exchange process in s. 194.011, F.S., the bill requires the property appraiser's evidence list to contain the property appraiser's property record card. The bill provides that the evidence list must contain the property record card even if it was not provided by the clerk.

B. SECTION DIRECTORY:

¹² To be eligible for the waiver, the petitioner must submit appropriate documentation issued by the Department of Children and Family Services along with the petition. Section 194.013(2), F.S.

¹³ Section 194.011(3)(f), F.S.; rule 12D-9.015(8), F.A.C.

¹⁴ Section 194.011(3)(e), F.S.; rule 12D-9.015(8), F.A.C.

¹⁵ "Real property" means land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 193.001(12), F.S..

¹⁶ "Tangible personal property" means all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself. Section 193.001(11)(d), F.S.

¹⁷ Section 193.062, F.S.; See also FLORIDA DEPARTMENT OF REVENUE, TANGIBLE PERSONAL PROPERTY, available at <http://dor.myflorida.com/dor/property/tpp/> (last visited March 11, 2014).

¹⁸ Section 196.183(1), F.S.

¹⁹ Section 196.183(3), F.S.

²⁰ Section 194.011, F.S.

Section 1 of the bill:

- Requires the clerk of the VAB to have available and distribute specified forms.
- Authorizes a joint VAB petition for tangible personal property under certain circumstances
- Revises the requirements for the property appraiser's evidence list during evidence exchange.

Section 2 of the bill sets an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates that there will be a \$100,000 negative, recurring impact to local government fees.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a cost-savings for owners of multiple pieces of similar tangible personal property that choose to contest their assessment because they can file a single joint petition rather than multiple petitions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Article VII, section 18(b) of the Florida Constitution requires any general law that reduces a local government's authority to raise revenues in the aggregate to be passed by a two-thirds vote of the membership of each house of the Legislature. However, the bill may be exempt under article VII, section 18(d) of the Florida Constitution because it is expected to have an insignificant impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department may need to revise rule 12D-9.015, F.A.C., relating to the filing of petitions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to value adjustment board proceedings;
 3 amending s. 194.011, F.S.; requiring the clerk of the
 4 value adjustment board to have available and
 5 distribute specified forms; authorizing the owner of
 6 multiple items of tangible personal property to file a
 7 joint petition with the value adjustment board under
 8 certain circumstances; requiring the property
 9 appraiser to include the property record card in an
 10 evidence list for a value adjustment board hearing
 11 under certain circumstances; providing an effective
 12 date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Paragraphs (a) and (f) of subsection (3) and
 17 paragraph (b) of subsection (4) of section 194.011, Florida
 18 Statutes, are amended to read:

19 194.011 Assessment notice; objections to assessments.—

20 (3) A petition to the value adjustment board must be in
 21 substantially the form prescribed by the department.

22 Notwithstanding s. 195.022, a county officer may not refuse to
 23 accept a form provided by the department for this purpose if the
 24 taxpayer chooses to use it. A petition to the value adjustment
 25 board shall describe the property by parcel number and shall be
 26 filed as follows:

27 (a) The clerk of the value adjustment board and the
 28 property appraiser shall have available and shall distribute
 29 forms prescribed by the Department of Revenue on which the
 30 petition shall be made. Such petition shall be sworn to by the
 31 petitioner.

32 (f) An owner of contiguous, undeveloped parcels, or an
 33 owner of multiple items of tangible personal property, may file
 34 with the value adjustment board a single joint petition if the
 35 property appraiser determines such parcels or items of tangible
 36 personal property to be ~~are~~ substantially similar in nature.

37 (4)

38 (b) No later than 7 days before the hearing, if the
 39 petitioner has provided the information required under paragraph
 40 (a), and if requested in writing by the petitioner, the property
 41 appraiser shall provide to the petitioner a list of evidence to
 42 be presented at the hearing, together with copies of all
 43 documentation to be considered by the value adjustment board and
 44 a summary of evidence to be presented by witnesses. The evidence
 45 list must contain the property appraiser's property record card
 46 ~~if provided by the clerk.~~ Failure of the property appraiser to
 47 timely comply with the requirements of this paragraph shall
 48 result in a rescheduling of the hearing.

49 Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 657 Tax on Insurance Premiums
SPONSOR(S): Davis
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Pewitt <i>JP</i>	Langston <i>BL</i>
2) Appropriations Committee			

SUMMARY ANALYSIS

Florida imposes an annual tax on premiums collected by insurance companies doing business in the state. This tax applies to life, health, property and casualty, title insurance, and most other types of policies at a rate of 1.75%, with deductions allowed for reinsurance accepted, return premiums and assessments. It applies to self-insurance funds at a rate of 1.6%. It applies to annuities at a rate of 1%. It applies to wet marine and transportation insurance at a rate of 0.75% of gross underwriting profit, defined as net premiums minus net losses paid.

The bill provides that insurance premiums tax may not be imposed on any portion of a title insurance premium retained by a title insurance agent or agency.

The Revenue Estimating Conference met on February 17, 2014 and estimated that the bill would have a negative recurring impact on general revenues of \$5.4 million beginning in fiscal year 2014-2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Insurance Premiums Tax

Florida imposes an annual tax on premiums collected by insurance companies doing business in the state.¹ This tax applies to life, health, property and casualty, title insurance, and most other types of policies at a rate of 1.75%, with deductions allowed for reinsurance accepted, return premiums and assessments.² It applies to self-insurance funds at a rate of 1.6%.³ It applies to annuities at a rate of 1%.⁴ It applies to wet marine and transportation insurance at a rate of 0.75% of gross underwriting profit, defined as net premiums minus net losses paid.⁵

There are a number of credits allowed against insurance premiums tax liability. These include:

- 100% of corporate income tax paid pursuant to chapter 220, F.S.⁶
- 15% of salaries paid by the company to its Florida-based employees.⁷
- 50% of a community contribution made pursuant to the Community Contribution Tax Credit Program for enterprise zones.⁸
- 100% of donations made to eligible scholarship funding organizations pursuant to s. 1002.395.⁹

The sum of the credits granted for corporate income tax and employee salaries may not exceed 65% of the insurer's premium tax liability.¹⁰

Retaliatory Tax

When another state or foreign country levies certain taxes or fees, including insurance premiums tax, on Florida insurers in excess of the taxes and fees levied by Florida on insurers from such other state or foreign country, a retaliatory tax is charged.¹¹ Companies from the other state or foreign country are taxed using the same tax and fee structure that a similar Florida insurer operating in such state or foreign country would be charged.

Title Insurance

Title insurance companies insure owners of real property and others with an interest in real property against loss due to encumbrance, defective titles, invalidity, or adverse claim to title.¹² The Financial Services Commission, consisting of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture and Consumer Services,¹³ must adopt a rule setting the premiums charged by title insurance companies and determining the minimum portion of those premiums retained

¹ Section 624.509, F.S.

² Section 624.509(1)(a), F.S.

³ Section 624.4625(4), F.S.

⁴ Section 624.509(1)(b), F.S.

⁵ Section 624.510, F.S.

⁶ Section 624.509(4), F.S.

⁷ Section 624.509(5), F.S.

⁸ Section 624.5105, F.S.

⁹ Section 624.51055, F.S.

¹⁰ Section 624.509(6)(a), F.S.

¹¹ Section 524.5091, F.S.

¹² Section 624.608, F.S.

¹³ Section 20.121(3), F.S.

by the title insurer.¹⁴ This percentage varies depending on the total coverage of the policy, and ranges from 30% to 40%.¹⁵ The portion not retained by the title insurer goes to the title insurance agent.

Proposed Changes

The bill provides that insurance premiums tax may not be imposed on any portion of a title insurance premium retained by a title insurance agent or agency.

It also moves some language relating to taxation of wet marine and transportation insurance premiums. This change has no substantive effect.

B. SECTION DIRECTORY:

Section 1. Amends s. 264.509, F.S., providing that insurance premiums tax may not be imposed on any portion of a title insurance premium retained by a title insurance agent or agency.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference met on February 17, 2014 and estimated that the bill would have a negative recurring impact on general revenues of \$5.4 million beginning in fiscal year 2014-2015.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would reduce the amount of insurance premiums tax paid by title insurance companies.

D. FISCAL COMMENTS:

¹⁴ Section 627.782, F.S.

¹⁵ Rule 69O-186, F.A.C.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to tax on insurance premiums; amending
 3 s. 624.509, F.S.; revising provisions relating to
 4 premium taxes paid by insurers; providing that wet
 5 marine and transportation insurance, and portions of
 6 insurance premiums retained by a title insurance agent
 7 or agency, are not subject to the insurance premium
 8 tax under specified circumstances; providing an
 9 effective date.

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

Section 1. Subsections (1) and (8) of section 624.509,
 Florida Statutes, are amended to read:

624.509 Premium tax; rate and computation.—

(1) In addition to the license taxes provided for in this
 chapter, each insurer shall ~~also~~ annually, ~~and~~ on or before
 March 1 ~~in each year, except as to wet marine and transportation~~
~~insurance taxed under s. 624.510~~, pay to the Department of
 Revenue a tax on insurance premiums, premiums for title
 insurance, or assessments, including membership fees and policy
 fees and gross deposits received from subscribers to reciprocal
 or interinsurance agreements, and ~~on~~ annuity premiums or
 considerations, received during the preceding calendar year, ~~the~~
~~amounts thereof~~ to be determined as follows ~~set forth in this~~
~~section, to wit:~~

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27 (a) An amount equal to 1.75 percent of the gross amount of
 28 such receipts on account of life and health insurance policies
 29 covering persons resident in this state and on account of all
 30 other types of policies and contracts, ~~except annuity policies~~
 31 or contracts taxable under paragraph (b), ~~+~~ covering property,
 32 subjects, or risks located, resident, or to be performed in this
 33 state, omitting premiums on reinsurance accepted, and less
 34 return premiums or assessments, but without deductions:

- 35 1. For reinsurance ceded to other insurers;
- 36 2. For moneys paid upon surrender of policies or
 37 certificates for cash surrender value;
- 38 3. For discounts or refunds for direct or prompt payment
 39 of premiums or assessments; and
- 40 4. On account of dividends of any nature or amount paid
 41 and credited or allowed to holders of insurance policies;
 42 certificates; or surety, indemnity, reciprocal, or
 43 interinsurance contracts or agreements; and

44 (b) An amount equal to 1 percent of the gross receipts on
 45 annuity policies or contracts paid by holders thereof in this
 46 state.

47 (8) ~~From and after July 1, 1980,~~ The premium tax
 48 authorized by this section may ~~shall~~ not be imposed on:

49 (a) Wet marine and transportation insurance taxed under s.
 50 624.510;

51 (b) Any portion of the premium retained by a title
 52 insurance agent or agency; or ~~upon~~

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53 (c) Receipts of annuity premiums or considerations paid by
54 holders in this state if the tax savings derived are credited to
55 the annuity holders. Upon request by the Department of Revenue,
56 an ~~any~~ insurer availing itself of this provision shall submit to
57 the department evidence that ~~which~~ establishes that the tax
58 savings derived have been credited to annuity holders. As used
59 in this paragraph subsection, the term "holders" includes ~~shall~~
60 ~~be deemed to include~~ employers contributing to an employee's
61 pension, annuity, or profit-sharing plan.

62 Section 2. This act shall take effect July 1, 2014.

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: Finance & Tax Subcommittee
2 Representative Davis offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (8) of section 624.509, Florida
7 Statutes, is amended to read:

8 624.509 Premium tax; rate and computation.—

9 (8) ~~From and after July 1, 1980,~~ The premium tax
10 authorized by this section may shall not be imposed on: upon

11 (a) Any portion of the title insurance premium retained by
12 a title insurance agent or agency; or

13 (b) Receipts of annuity premiums or considerations paid by
14 holders in this state if the tax savings derived are credited to
15 the annuity holders. Upon request by the Department of Revenue,
16 any insurer availing itself of this provision shall submit to an
17 the department evidence that ~~which~~ establishes that the tax

Amendment No. 1

18 savings derived have been credited to annuity holders. As used
19 in this paragraph subsection, the term "holders" includes shall
20 ~~be deemed to include~~ employers contributing to an employee's
21 pension, annuity, or profit-sharing plan.

22 Section 2. Subsection (2) of section 627.7711, Florida
23 Statutes, is amended to read:

24 627.7711 Definitions.—As used in this part, the term:

25 (2) "Premium" means the charge, as specified by rule of
26 the commission, which ~~that~~ is made by a title insurer for a
27 title insurance policy, including the charge for performance of
28 primary title services by a title insurer or title insurance
29 agent or agency, and incurring the risks incident to such
30 policy, under the several classifications of title insurance
31 contracts and forms, ~~and upon which charge a premium tax is paid~~
32 ~~under s. 624.509~~. As used in this part or in any other law, with
33 respect to title insurance, the word "premium" does not include
34 a commission.

35 Section 3. This act shall take effect July 1, 2014.

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

40 Remove everything before the enacting clause and insert:

41 A bill to be entitled

42 An act relating to tax on insurance premiums; amending s.
43 624.509, F.S.; revising provisions relating to premium taxes

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 657 (2014)

Amendment No. 1

44 | paid by insurers; providing that the tax does not apply to any
45 | portion of the premium retained by a title insurance agent or
46 | agency; amending s. 627.7711, F.S.; conforming provisions to
47 | changes made by the act; providing an effective date.