

---

# Finance and Tax Committee

Thursday, January 21, 2016

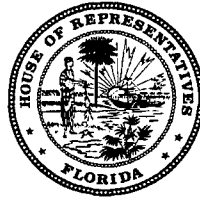
3:00 p.m. – 6:00 p.m.

Morris Hall

MEETING PACKET

# The Florida House of Representatives

## Finance and Tax Committee



**Steve Crisafulli**  
Speaker

**Matt Gaetz**  
Chair

### AGENDA


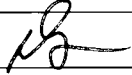
January 21, 2016  
3:00 p.m. – 6:00 p.m.  
Morris Hall

- I. Call to Order/Roll Call
- II. Chair's Opening Remarks
- III. **Consideration on the following bills:**
  - CS/HB 491 Water and Wastewater by Energy & Utilities Subcommittee, Smith
  - HJR 1009 Tax Exemption for Senior, Totally Permanently Disabled First Responders by Metz
  - HB 1015 Determination of Maximum Millage Rates by Nuñez
- IV. Discussion of Sales Tax Exemption of Manufacturing Machinery & Equipment
- V. Closing Remarks and Adjournment



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 491 Water and Wastewater  
**SPONSOR(S):** Energy & Utilities Subcommittee; Smith  
**TIED BILLS:** IDEN./SIM. BILLS: SB 534

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 1 N, As CS	Keating	Keating
2) Finance & Tax Committee		Aldridge 	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. This bill adopts several of the Study Committee’s recommendations for legislative action. In particular, the bill:

- Directs the Division of Bond Finance to review the allocation of private activity bonds in Florida with respect to water and wastewater projects.
- Provides a sales tax exemption for sales or leases to a water or wastewater investor-owned utility (IOU) owned or operated by a Florida corporation, if the goods or services are used in the state.
- Creates an exemption from PSC regulation for persons who resell water service to individually-metered residents at a price that does not exceed the purchase price of water plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.
- Requires the PSC, upon an IOU’s request in a rate case, to create a reserve fund for the IOU to be used for certain infrastructure repair and replacement projects, with disbursement subject to PSC approval.
- 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:
  - For more than one rate case at any given time; and
  - Where the rate case expense is incurred to prepare or file a staff-assisted rate case in which no party intervenes.
- Authorizes the PSC, on its own motion or based on customer complaints, to review water quality issues involving secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) and wastewater service issues involving odor, noise, aerosol drift, or lighting.
- Expands the availability of low-interest loans through the State Revolving Fund to all for-profit water utilities.

The Revenue Estimating Conference estimated that the sales tax exemption in the bill will have a negative impact on state revenues of \$2.7 million in FY 2016-17 (-\$3.0 million recurring). It also estimated that the exemption will have a recurring negative impact on local government revenues of \$0.7 million annually beginning in FY 2016-17. The bill appears to have an insignificant impact on state government expenditures and no impact on local government expenditures.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### *Water and Wastewater Industry Overview*

In various areas throughout Florida, water and wastewater services are provided through privately-owned and operated water and/or wastewater companies. These privately-owned companies are referred to as “investor-owned utilities,” or “IOUs.” IOUs can range in size from very small systems, owned by individuals as sole proprietorships and serving only a few dozen customers in a small neighborhood, to systems owned by large interstate corporations which serve tens of thousands of customers in multiple Florida counties.

For IOUs operating within a single Florida county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC or Commission) to regulate those utilities.<sup>1</sup> Regardless of whether the county has opted to regulate IOUs, the PSC has jurisdiction over all water and wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.<sup>2</sup> Currently, the PSC has jurisdiction over 146 water and/or wastewater IOUs in 37 of 67 counties in Florida.<sup>3</sup> 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.<sup>4</sup>

For regulatory purposes, the PSC classifies a water or wastewater IOU into one of three categories based on annual operating revenues:<sup>5</sup>

Class A – Operating revenues of \$1,000,000 or more

Class B – Operating revenues of \$200,000 or more but less than \$1,000,000

Class C – Operating revenues less than \$200,000

Currently, there are 13 Class A utilities, 37 Class B utilities, and 96 Class C utilities under the PSC’s jurisdiction.

##### *Study Committee on Investor-Owned Water and Wastewater Utility Systems*

Chapter 2012-187, Laws of Florida, created the Study Committee on Investor-Owned Water and Wastewater Utility Systems (Study Committee)<sup>6</sup> to “identify issues of concern of investor-owned water

---

<sup>1</sup> s. 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this election only after 10 continuous years of PSC regulation.

<sup>2</sup> *Id.*

<sup>3</sup> *Facts and Figures of the Florida Utility Industry*, Florida Public Service Commission, March 2015, available at <http://www.psc.state.fl.us/publications/reports.aspx>.

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

<sup>5</sup> Rules 25-30.110(4) and 25-30.115, F.A.C. As noted in these rules, this classification system is used by the National Association of Regulatory Utility Commissioners for publishing its system of accounts.

<sup>6</sup> As required by the law, the Study Committee was comprised of 18 members, including three non-voting members and 15 voting members. The three non-voting members included Commissioner Julie I. Brown (representing the PSC as the Study Committee Chair), a representative of the Florida Department of Environmental Protection, and the Public Counsel. The 15 voting members included State Senator Alan Hays (appointed by the President of the Senate), State Representative Ray Pilon (appointed by the Speaker of the House), and representatives of the following entities or groups, as appointed by the Governor: a county commission that regulates investor-owned water/wastewater utilities; a governmental authority created under ch. 163, F.S.; a water management district; a county health department; two Class A utilities; a Class B utility; a Class C utility; a utility owned or operated by a

and wastewater utility systems, particularly small systems, and their customers” and to research possible solutions.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> Consistent with the law, the Study Committee submitted a report containing its recommendations to the Speaker of the House, the President of the Senate, and the Governor, on February 15, 2013.

The Study Committee’s report included recommendations for legislative action, agency rulemaking, and other agency action. Based on the issues that it was required to consider, the Study Committee recommended legislative action to do the following:

- Increase the availability of low-interest loans to small, privately owned water and wastewater utilities by:
  - Expanding availability of low-interest loans through the State Revolving Fund (SRF) to all for-profit water utilities;
  - Allowing IOUs to apply “pass-through” treatment for loan service fees or loan origination fees for eligible projects as identified by the PSC; and
  - Directing the Division of Bond Finance to review the allocation of private activity bonds (PABs) in Florida with respect to water and wastewater projects.
- Provide a sales tax exemption for sales or leases to an IOU owned or operated by a Florida corporation.
- Create an exemption from PSC regulation for persons who resell service to individually-metered end-users at a price that does not exceed the actual purchase price of water plus actual costs of meter reading and billing not to exceed 9%.

Based on additional issues that it identified and considered, the Study Committee recommended legislative action to do the following:

- Authorize the PSC, during a rate case, to create individual utility reserve funds to be used for projects identified in an IOU’s capital improvement plan, with disbursement subject to approval by the PSC, as a means of reducing borrowing costs and making funds more readily available.
- Identify specific types of expenses eligible for “pass-through” treatment in utility rates, and/or authorize the PSC to adopt rules identifying such expenses, provided the expenses are beyond the utility’s control, to help minimize the need for costly rate case proceedings.
- Reduce the impact of rate case expense on customer rates by prohibiting the recovery of rate case expense in certain circumstances.

---

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.

<sup>7</sup> s. 2, Ch. 2012-187, Laws of Fla.

<sup>8</sup> *Id.*

<sup>9</sup> See Sections II and III, *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems*, February 15, 2013 (*Study Committee Report*), available at <http://www.psc.state.fl.us/utilities/waterwastewater/>.

- Provide a mechanism for the resolution of issues involving secondary water standards (e.g., odor, taste, corrosiveness, etc.) and wastewater operational requirements.

### *Private Activity Bonds*

Qualified private activity bonds are tax-exempt bonds issued by a state or local government, the proceeds of which are used for a defined qualified purpose by an entity other than the government issuing the bonds. For a private activity bond to be tax-exempt, 95% or more of the net bond proceeds must be used for one of the qualified purposes listed in ss. 142 through 145 and 1394 of the Internal Revenue Code (the Code). These qualified purposes include facilities used to furnish water or sewer services. The Code limits an issuing authority (such as a state) to a maximum amount of tax-exempt bonds that can be issued to finance a particular qualified purpose during a calendar year. Facilities used to furnish water or sewer services are subject to a volume cap.<sup>10</sup>

Private activity bonds are administered in Florida by the Division of Bond Finance of the State Board of Administration (the Division) under ss. 159.801-159.816, F.S. Each year, the Division determines the amount of private activity bonds permitted to be issued in Florida under the Code.<sup>11</sup> This amount is allocated on January 1 of each year as follows:<sup>12</sup>

- An initial amount is allocated to manufacturing facility projects.
- 50 percent of the amount remaining after the initial allocation is allocated to individual counties and groups of counties<sup>13</sup> on a per capita basis for any permitted purpose, which may include water and sewer projects.
- 25 percent of the amount remaining after the initial allocation is allocated to the Florida Housing Finance Corporation for use in connection with the issuance of housing bonds.
- 5 percent of the amount remaining after the initial allocation is allocated to the state allocation pool and applied to “priority projects,” which may include water and sewer projects.
- 20 percent of the amount remaining after the initial allocation is allocated to the Florida First Business allocation pool for projects certified by the Department of Economic Opportunity.

The Study Committee was unable to determine the amount of private activity bonds ultimately utilized for water and sewer projects in Florida.<sup>14</sup>

### *Sales and Use Tax*

In general, sales and leases of tangible personal property are subject to the state sales and use tax, as specified in s. 212.05, F.S.<sup>15</sup> There is no general exemption for sales or leases made to water IOUs or wastewater IOUs. Florida law does provide an exemption for certain sales made to political subdivisions<sup>16</sup> (which may include water and wastewater utilities owned and operated by governmental entities) and for sales and leases to non-profit water systems.<sup>17</sup>

<sup>10</sup> *Tax-Exempt Private Activity Bonds, Compliance Guide*, Internal Revenue Service Publication 4078, Version 09-2005.

<sup>11</sup> s. 159.804, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> These individual counties and groups of counties are identified in s. 159.804(2)(b), F.S.

<sup>14</sup> *Study Committee Report*, p. 43.

<sup>15</sup> But see s. 212.051, F.S., which provides that “sales, use, or privilege taxes shall not be collected with respect to any facility, device, fixture, equipment, machinery, specialty chemical, or bioaugmentation product used primarily for the control or abatement of pollution or contaminants in manufacturing, processing, compounding, or producing for sale items of tangible personal property at a fixed location, or any structure, machinery, or equipment installed in the reconstruction or replacement of such facility, device, fixture, equipment, or machinery.” This section defines “specialty chemicals” as “those chemicals used to enhance or further treat wastewater, including, but not limited to, defoamers, nutrients, and polymers”, and defines “bioaugmentation products” as “the microorganisms used in waste treatment plants to break down solids and consume organic matter.”

<sup>16</sup> s. 212.08(6), F.S.

<sup>17</sup> s. 212.08(7)(tt), F.S.

## *Resellers of Water Service*

As noted above, the PSC currently has jurisdiction to regulate the rates and service of water and wastewater utilities in 37 of 67 counties in Florida. For purposes of the PSC's jurisdiction, "utility" is defined as every person owning, operating, managing, or controlling a system, who is providing water or wastewater service to the public for compensation.<sup>18</sup> However, certain entities that meet this definition are exempt from PSC regulation as utilities.<sup>19</sup> 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.<sup>20</sup> If the reseller includes any additional costs in the rate or charge to the retail customer, the reseller is considered a utility subject to PSC regulation.

Reseller utilities that are regulated by the PSC generally have significant investment in distribution and collection lines and other utility equipment. Examples include mobile home parks and subdivisions. In a rate proceeding, the PSC determines the utility's investment and expenses related to the facilities it owns and operates, then it sets rates accordingly. The cost of the water and/or wastewater service purchased from a wholesale provider, which is often a significant portion of the customers' bills, is allowed to be passed through to the customers pursuant to s. 367.081(4)(b), F.S. Resellers that choose not to pass along costs beyond their cost to purchase water or wastewater (and therefore remain exempt from PSC regulation) generally have very little investment in equipment or lines needed to provide the service. Examples include apartment complexes, condominium buildings and small master-metered shopping centers.<sup>21</sup>

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.<sup>22</sup>

## *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.<sup>23</sup>

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.

---

<sup>18</sup> s. 367.021(12), F.S.

<sup>19</sup> See s. 367.022, F.S.

<sup>20</sup> s. 367.022(8), F.S.

<sup>21</sup> *Study Committee Report*, p. 61.

<sup>22</sup> *Id.*, pp. 61-62.

<sup>23</sup> *Id.*, p. 67.



### *Pass-Through Costs*

Outside of a rate case, PSC-regulated water and wastewater IOUs are entitled to “pass through” specific types of expenses without the requirement of a PSC hearing.<sup>24</sup> This mechanism provides quick rate relief to a utility when it experiences an increase in one of these types of costs and may help defer the need for a full rate case. Currently, the types of expenses eligible for pass-through treatment are limited by statute to the following:<sup>25</sup>

- 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.<sup>26</sup>

### *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.<sup>27</sup> 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.<sup>28</sup> The amount of rate case expense deemed reasonable is 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.<sup>29</sup> According to the Study Committee, the impact of rate case expense on customer bills varies from case to case and is often negligible.<sup>30</sup> 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.<sup>31</sup>

There is no legal limit on the frequency of rate cases. In some instances, an IOU may file for approval to change its rates less than 4 years after its previous rate case. In these cases, the IOUs rates may, for a certain period of time, include rate case expense for more than one rate case, provided that the PSC has determined that there is a reasonable level of rate case expense to be recovered.

A water or wastewater IOU with gross annual revenues under \$275,000 is permitted by law to request and obtain assistance from the PSC staff in preparing the IOU’s rate case.<sup>32</sup> These rate cases are referred to as staff-assisted rate cases (SARCs). In these cases, the PSC staff reviews the IOUs

---

<sup>24</sup> s. 367.081(4)(b), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> s. 367.081(4)(c), F.S.

<sup>27</sup> s. 367.081(7), F.S.

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

<sup>29</sup> s. 367.0816, F.S.

<sup>30</sup> *Study Committee Report*, p. 83.

<sup>31</sup> *Study Committee Report*, p. 88.

<sup>32</sup> s. 367.0814, F.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.<sup>33</sup> 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.<sup>34</sup> 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.<sup>35</sup> The average drops to \$3,025 by removing one case.<sup>36</sup>

### *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.<sup>37</sup>

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

With respect to wastewater, DEP requires that new treatment plants and modifications to existing plants be designed and sited to minimize adverse effects on neighboring residential and commercial areas resulting from odors, noise, aerosol drift, and lighting.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> DEP generally requires corrective action only in response to significant complaints or if a primary contaminant level has also been exceeded.<sup>42</sup>

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.<sup>43</sup> Sanitary surveys, outstanding citations, violations and consent orders on file with DEP and county health departments are also considered. In addition, DEP and county health department officials' testimony and customer testimony concerning quality of service is considered.<sup>44</sup> In most cases, the emphasis of this evaluation is compliance with standards related to health and safety of the public and the environment.<sup>45</sup> 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

---

<sup>33</sup> *Id.* However, a person other than the utility may protest or appeal the PSC's order approving the rates and charges.

<sup>34</sup> *Study Committee Report*, pp. 84-91.

<sup>35</sup> *Study Committee Report*, p. 87.

<sup>36</sup> *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.

<sup>37</sup> See ch. 403, F.S., and Chapters 62-550, 555, 602, and 699, F.A.C., for drinking water regulations, and Chapters 62-600, 604, 610, 620, 621, and 640, F.A.C., for wastewater regulations.

<sup>38</sup> Rule 62-550.320, F.A.C.

<sup>39</sup> Rule 62-600.400(2)(a), F.A.C.

<sup>40</sup> *Id.*

<sup>41</sup> Rule 62-600.410, F.A.C.

<sup>42</sup> *Study Committee Report*, p. 105.

<sup>43</sup> Rule 25-30.433(1), F.A.C.

<sup>44</sup> *Id.*

<sup>45</sup> *Study Committee Report*, p. 106.

water management districts, the PSC may reduce the IOU's return on equity until the standards are met.<sup>46</sup>

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

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

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

#### *Drinking Water State Revolving Fund*

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

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.<sup>51</sup> The remaining PSC-regulated Class B and Class A water IOUs are, presumably, not eligible to use the SRF program.

#### **Effect of Proposed Changes**

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

---

<sup>46</sup> s. 367.111(2), F.S.

<sup>47</sup> Ch. 2014-68, Laws of Florida, codified at ss. 367.072 and 367.0812, F.S.

<sup>48</sup> s. 403.8532(3), F.S. An investor-owned public water system that serves more than 1,500 connections may qualify for a loan only if the proposed project will result in the consolidation of two or more public water systems.

<sup>49</sup> Florida Department of Environmental Protection, *Drinking Water State Revolving Fund - Eligible Local Governments*, <http://www.dep.state.fl.us/water/wff/dwsrf/ellocgov.htm> (last accessed November 12, 2015).

<sup>50</sup> s. 403.8532(9)(a), F.S.

<sup>51</sup> *Study Committee Report*, pp. 36-37. The report notes that this data does not include water IOUs that are regulated by counties.

- Directs the Division of Bond Finance to review the allocation of private activity bonds (PABs) in Florida with respect to water and wastewater projects.
- Provides a sales tax exemption for sales or leases to a water or wastewater IOU owned or operated by a Florida corporation if the goods or services are used in the state.
- Creates an exemption from PSC regulation for persons who resell water service to individually-metered residents at a price that does not exceed the purchase price of water plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.
- Requires the PSC, upon an IOU's request in a rate case, to create a reserve fund for the IOU to be used for certain infrastructure repair and replacement projects, with disbursement subject to PSC approval.
- 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:
  - For more than one rate case at any given time; and
  - Where the rate case expense is incurred to prepare or file a staff-assisted rate case in which no party intervenes.
- Authorizes the PSC, on its own motion or based on customer complaints, to review water quality issues involving secondary drinking water standards (e.g., standards related to odor, taste, and corrosiveness) and wastewater service issues involving odor, noise, aerosol drift, or lighting.
- Expands the availability of low-interest loans through the State Revolving Fund (SRF) to all for-profit water utilities.

#### *Private Activity Bonds*

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

#### *Sales and Use Tax Exemption*

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

#### *Resellers of Water Service*

The bill creates an exemption from PSC regulation for a person who resells water service to his or her tenants or to individually metered residents for a fee that does not exceed the reseller's actual purchase price of the water plus the actual cost of meter reading and billing, not to exceed 9 percent of the actual cost of service.

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

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

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

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

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

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

### *Pass-Through Costs*

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

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

The bill authorizes the PSC, by rule, to establish additional specific expense items eligible for 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.

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

### *Rate Case Expense*

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

First, the bill requires an IOU, when it begins recovery of approved rate case expense associated with a new rate case, to discontinue the recovery of any uncollected rate case expense approved in a prior rate case. This provision appears intended to discourage the frequent filing of rate cases to avoid

“pancaking” of rate case expense in customer rates from more than one rate case at a time. In some instances, this may discourage an IOU from filing a necessary rate case, though it may also result in more careful consideration by an IOU of the costs, timing, and need to file a rate case.

Second, 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 requires that the PSC allow recovery of rate case expense for such fees incurred after any protest or appeal of the PSC’s decision by a party other than the IOU. The bill requires the PSC to adopt rules by December 31, 2016, to implement these provisions.

#### *Quality of Service / Secondary Standards*

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

#### *Drinking Water State Revolving Fund*

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

#### **B. SECTION DIRECTORY:**

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

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

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

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

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

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

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

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

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

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference, on October 28, 2015, estimated that the sales tax exemption in the bill will have a negative impact on state revenues of \$2.7 million in FY 2016-17 (-\$3.0 million recurring).

#### 2. Expenditures:

The bill appears to have an insignificant impact on state government expenditures.

The PSC has not identified an impact on agency expenditures; however, it may be required to expend resources to complete rulemaking as required by the bill. In its analysis of a similar bill filed in 2015, the Department of Revenue identified an insignificant impact on its expenditures.<sup>52</sup> DEP, in its analysis of the same bill filed in 2015, estimated additional expenditures of between \$10,000 and \$100,000 to employ additional expertise needed to evaluate the credit worthiness of large, complex water systems that become eligible under the bill to seek low-interest loans through the SRF; however, it indicated that these costs will be covered by service fees collected in the normal course of the SRF program.<sup>53</sup>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

#### *Private Activity Bonds*

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

#### *Sales and Use Tax Exemption*

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

#### *Resellers of Water Service*

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

<sup>52</sup> Department of Revenue, Agency Analysis of 2015 HB 1173, p. 3 (March 5, 2015).

<sup>53</sup> Department of Environmental Protection, Agency Analysis of 2015 HB 1173, pp. 2-4 (March 13, 2015).

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

The establishment of individual reserve funds may reduce borrowing costs and make funding more readily available for PSC-regulated water and wastewater IOUs to make needed improvements and repairs. In some instances, the availability of these reserve funds may allow IOUs to avoid or defer the need for a rate case, the expense of which ultimately would be borne by ratepayers.

### *Pass-Through Costs*

The expanded availability of “pass-through” treatment for new expense items may, in some instances, allow IOUs to avoid or defer the need for a rate case, the expense of which ultimately would be borne by ratepayers.

### *Rate Case Expense*

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

### *Quality of Service / Secondary Standards*

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

### *Drinking Water State Revolving Fund*

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

## D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

The PSC’s analysis indicates that the provisions of the bill that prohibit or limit recovery of rate case expense in certain circumstances may result in a regulatory taking without just compensation in violation of Amendment XIV of the U.S. Constitution.<sup>54</sup> This provision of the constitution establishes

<sup>54</sup> Public Service Commission, Analysis of 2016 HB 491 (November 12, 2015).



that no person shall be deprived of life, liberty or property without due process of law and that private property shall not be taken for public use without just compensation.

**B. RULE-MAKING AUTHORITY:**

The bill requires the PSC to adopt rules:

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

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

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On November 17, 2015, the Energy & Utilities Subcommittee adopted three amendments to the bill and reported the bill favorably as a committee substitute. The amendments:

- Make it mandatory, rather than permissive, that the PSC create a reserve fund if requested by a utility in a rate case proceeding.
- Make it mandatory, rather than permissive, that the PSC allow recovery of rate case expense (i.e., fees for attorneys and other outside consultants) incurred by a utility in a staff-assisted rate case after any protest or appeal of the PSC's decision by a party other than the utility.
- Remove a provision of the bill that limited a utility's recovery of rate case expense to 50 percent of the amount of rate case expense deemed reasonable by the PSC.

1                   A bill to be entitled  
 2           An act relating to water and wastewater; creating s.  
 3           159.8105, F.S.; requiring the Division of Bond Finance  
 4           of the State Board of Administration to review the  
 5           allocation of private activity bonds to determine the  
 6           availability of additional allocation and reallocation  
 7           of bonds for water and wastewater infrastructure  
 8           projects; amending s. 212.08, F.S.; extending  
 9           specified tax exemptions to certain investor-owned  
 10          water and wastewater utilities; amending s. 367.022,  
 11          F.S.; exempting from regulation by the Florida Public  
 12          Service Commission a person who resells water service  
 13          to certain tenants or residents up to a specified  
 14          percentage or cost; amending s. 367.081, F.S.;  
 15          requiring the commission to create a utility reserve  
 16          fund; requiring the commission to adopt rules to  
 17          govern the implementation, management, and use of the  
 18          fund; establishing criteria for adjusted rates;  
 19          specifying expense items that may be the basis for an  
 20          automatic increase or decrease of a utility's rates;  
 21          authorizing the commission to establish by rule  
 22          additional specified expense items; amending s.  
 23          367.0814, F.S.; requiring the commission to award rate  
 24          case expenses to recover attorney fees or fees of  
 25          other outside consultants in certain circumstances;  
 26          requiring the commission to adopt rules by a certain

27 date; amending s. 367.0816, F.S.; prohibiting a  
 28 utility from recovering certain expenses for more than  
 29 one rate case at a time; amending s. 367.111, F.S.;  
 30 authorizing the commission to review water quality and  
 31 wastewater service under certain circumstances;  
 32 amending s. 403.8532, F.S.; authorizing the Department  
 33 of Environmental Protection to require or request that  
 34 the Florida Water Pollution Control Financing  
 35 Corporation make loans, grants, and deposits to for-  
 36 profit, privately owned, or investor-owned water  
 37 systems; removing current restrictions on such  
 38 activities; amending s. 367.171, F.S.; making  
 39 technical changes; providing an effective date.

40  
 41 Be It Enacted by the Legislature of the State of Florida:

42  
 43 Section 1. Section 159.8105, Florida Statutes, is created  
 44 to read:

45 159.8105 Allocation of bonds for water and wastewater  
 46 infrastructure projects.—The division shall review the  
 47 allocation of private activity bonds to determine the  
 48 availability of additional allocation and reallocation of bonds  
 49 for water and wastewater infrastructure projects.

50 Section 2. Paragraph (ooo) is added to subsection (7) of  
 51 section 212.08, Florida Statutes, to read:

52 212.08 Sales, rental, use, consumption, distribution, and

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

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

76 (ooo) Investor-owned water and wastewater utilities.—Sales  
 77 or leases to an investor-owned water or wastewater utility owned  
 78 or operated by a Florida corporation are exempt from the tax

79 imposed by this chapter if the sole or primary function of the  
 80 corporation is to construct, maintain, or operate a water or  
 81 wastewater system in this state and if the goods or services  
 82 purchased or leased are used in this state.

83 Section 3. Subsections (9) through (12) of section  
 84 367.022, Florida Statutes, are renumbered as subsections (10)  
 85 through (13), respectively, and a new subsection (9) is added to  
 86 that section to read:

87 367.022 Exemptions.—The following are not subject to  
 88 regulation by the commission as a utility nor are they subject  
 89 to the provisions of this chapter, except as expressly provided:

90 (9) Any person who resells water service to his or her  
 91 tenants or to individually metered residents for a fee that does  
 92 not exceed the actual purchase price of the water plus the  
 93 actual cost of meter reading and billing, not to exceed 9  
 94 percent of the actual cost of service.

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

98 367.081 Rates; procedure for fixing and changing.—

99 (2)

100 (c) In establishing rates for a utility, the commission,  
 101 upon petition by the utility, shall create a utility reserve  
 102 fund for infrastructure repair and replacement for a utility for  
 103 existing distribution and collection infrastructure that is  
 104 nearing the end of its useful life or is detrimental to water

105 quality or reliability of service, to be funded by a portion of  
 106 the rates charged by the utility, by a secured escrow account,  
 107 or through a letter of credit. The commission shall adopt rules  
 108 to govern the implementation, management, and use of the fund,  
 109 including, but not limited to, rules related to expenses for  
 110 which the fund may be used, segregation of reserve account  
 111 funds, requirements for a capital improvement plan, and  
 112 requirements for commission authorization before disbursements  
 113 are made from the fund.

114 (4)

115 (b) The approved rates of any utility ~~which receives all~~  
 116 ~~or any portion of its utility service from a governmental~~  
 117 ~~authority or from a water or wastewater utility regulated by the~~  
 118 ~~commission and which redistributes that service to its utility~~  
 119 ~~customers shall be automatically increased or decreased without~~  
 120 ~~hearing, upon verified notice to the commission 45 days prior to~~  
 121 ~~its implementation of the increase or decrease that the~~  
 122 utility's costs for any specified expense item ~~rates charged by~~  
 123 ~~the governmental authority or other utility have changed. The~~  
 124 ~~approved rates of any utility which is subject to an increase or~~  
 125 ~~decrease in the rates or fees that it is charged for electric~~  
 126 ~~power, the amount of ad valorem taxes assessed against its used~~  
 127 ~~and useful property, the fees charged by the Department of~~  
 128 ~~Environmental Protection in connection with the National~~  
 129 ~~Pollutant Discharge Elimination System Program, or the~~  
 130 ~~regulatory assessment fees imposed upon it by the commission~~

131 ~~shall be increased or decreased by the utility, without action~~  
 132 ~~by the commission, upon verified notice to the commission 45~~  
 133 ~~days prior to its implementation of the increase or decrease~~  
 134 ~~that the rates charged by the supplier of the electric power or~~  
 135 ~~the taxes imposed by the governmental authority, or the~~  
 136 ~~regulatory assessment fees imposed upon it by the commission~~  
 137 ~~have changed. The new rates authorized shall reflect the amount~~  
 138 ~~of the change of the ad valorem taxes or rates imposed upon the~~  
 139 ~~utility by the governmental authority, other utility, or~~  
 140 ~~supplier of electric power, or the regulatory assessment fees~~  
 141 ~~imposed upon it by the commission. The approved rates of any~~  
 142 ~~utility shall be automatically increased, without hearing, upon~~  
 143 ~~verified notice to the commission 45 days prior to~~  
 144 ~~implementation of the increase that costs have been incurred for~~  
 145 ~~water quality or wastewater quality testing required by the~~  
 146 ~~Department of Environmental Protection.~~

147 1. The new rates authorized shall reflect, on an amortized  
 148 or annual basis, as appropriate, the cost of, or the amount of  
 149 change in the cost of, the specified expense item ~~required water~~  
 150 ~~quality or wastewater quality testing performed by laboratories~~  
 151 ~~approved by the Department of Environmental Protection for that~~  
 152 ~~purpose.~~ The new rates, however, shall not reflect the costs of  
 153 any specified expense item ~~required water quality or wastewater~~  
 154 ~~quality testing~~ already included in a utility's rates. Specified  
 155 expense items that are eligible for automatic increase or  
 156 decrease of a utility's rates include, but are not limited to:

- 157        a. The rates charged by a governmental authority or other
- 158 water or wastewater utility regulated by the commission which
- 159 provides utility service to the utility.
- 160        b. The rates or fees that the utility is charged for
- 161 electric power.
- 162        c. The amount of ad valorem taxes assessed against the
- 163 utility's used and useful property.
- 164        d. The fees charged by the Department of Environmental
- 165 Protection in connection with the National Pollutant Discharge
- 166 Elimination System Program.
- 167        e. The regulatory assessment fees imposed upon the utility
- 168 by the commission.
- 169        f. Costs incurred for water quality or wastewater quality
- 170 testing required by the Department of Environmental Protection.
- 171        g. The fees charged for wastewater biosolids disposal.
- 172        h. Costs incurred for any tank inspection required by the
- 173 Department of Environmental Protection or a local governmental
- 174 authority.
- 175        i. Treatment plant operator and water distribution system
- 176 operator license fees required by the Department of
- 177 Environmental Protection or a local governmental authority.
- 178        j. Water or wastewater operating permit fees charged by
- 179 the Department of Environmental Protection or a local
- 180 governmental authority.
- 181        k. Consumptive or water use permit fees charged by a water
- 182 management district.



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

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

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

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

203           367.0814 Staff assistance in changing rates and charges;  
 204 interim rates.—

205           (3) The provisions of s. 367.081(1), (2)(a), and (3) shall  
 206 apply in determining the utility's rates and charges. However,  
 207 the commission may not award rate case expenses to recover  
 208 attorney fees or fees of other outside consultants who are

209 engaged for the purpose of preparing or filing the case if a  
 210 utility receives staff assistance in changing rates and charges  
 211 pursuant to this section, unless the Office of Public Counsel or  
 212 interested parties have intervened. The commission may award  
 213 rate case expenses for attorney fees or fees of other outside  
 214 consultants if such fees are incurred for the purpose of  
 215 providing consulting or legal services to the utility after the  
 216 initial staff report is made available to customers and the  
 217 utility. If there is a protest or appeal by a party other than  
 218 the utility, the commission shall award rate case expenses to  
 219 the utility for attorney fees or fees of other outside  
 220 consultants for costs incurred after the protest or appeal. By  
 221 December 31, 2016, the commission must adopt rules to administer  
 222 this subsection.

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

225 367.0816 Recovery of rate case expenses.—

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

233 (2) A utility may not recover the 4-year amortized rate  
 234 case expense for more than one rate case at any given time. If

235 the commission approves and a utility implements a rate change  
 236 from a subsequent rate case pursuant to this section, any  
 237 unamortized rate case expense for a prior rate case must be  
 238 discontinued. The unamortized portion of rate case expense for a  
 239 prior rate case must be removed from rates before the  
 240 implementation of an additional amortized rate case expense for  
 241 the most recent rate proceeding.

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

244 367.111 Service.—

245 (3) The commission may, on its own motion or based on  
 246 complaints of customers of a water utility subject to its  
 247 jurisdiction, review water quality as it pertains to secondary  
 248 drinking water standards established by the Department of  
 249 Environmental Protection. The commission may, on its own motion  
 250 or based on complaints of customers of a wastewater utility  
 251 subject to its jurisdiction, review wastewater service as it  
 252 pertains to odor, noise, aerosol drift, or lighting.

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

255 403.8532 Drinking water state revolving loan fund; use;  
 256 rules.—

257 (3) The department may make, or request that the  
 258 corporation make, loans, grants, and deposits to community water  
 259 systems; for-profit, privately owned, or investor-owned water  
 260 systems; nonprofit, transient, noncommunity water systems; and

261 nonprofit, nontransient, noncommunity water systems to assist  
 262 them in planning, designing, and constructing public water  
 263 systems, ~~unless such public water systems are for profit~~  
 264 ~~privately owned or investor-owned systems that regularly serve~~  
 265 ~~1,500 service connections or more within a single certified or~~  
 266 ~~franchised area. However, a for-profit privately owned or~~  
 267 ~~investor-owned public water system that regularly serves 1,500~~  
 268 ~~service connections or more within a single certified or~~  
 269 ~~franchised area may qualify for a loan only if the proposed~~  
 270 ~~project will result in the consolidation of two or more public~~  
 271 ~~water systems.~~ The department may provide loan guarantees,  
 272 purchase loan insurance, and refinance local debt through the  
 273 issue of new loans for projects approved by the department.  
 274 Public water systems may borrow funds made available pursuant to  
 275 this section and may pledge any revenues or other adequate  
 276 security available to them to repay any funds borrowed.

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

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

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

284 (b) If an insufficient number of the projects for which  
 285 funds are reserved under this subsection have been submitted to  
 286 the department at the time the funding priority list authorized

287 under this section is adopted, the reservation of these funds no  
 288 longer applies. The department may award the unreserved funds as  
 289 otherwise provided in this section.

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

292 367.171 Effectiveness of this chapter.-

293 (8) Each county that ~~which~~ is not subject to ~~excluded from~~  
 294 ~~the provisions of~~ this chapter shall regulate the rates of all  
 295 utilities in that county which would otherwise be subject to  
 296 regulation by the commission pursuant to ss. s. 367.081(1), (2),  
 297 (3), and (6) and 367.165. The county shall not regulate the  
 298 rates or charges of any system or facility that ~~which~~ would  
 299 otherwise be exempt from commission regulation pursuant to s.  
 300 367.022(2). For this purpose, the county or its agency shall  
 301 proceed as though the county or agency is the commission.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 491 (2016)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Finance & Tax Committee  
2 Representative Smith offered the following:

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

5 Remove lines 50-82  
6  
7

8 -----  
9 **T I T L E A M E N D M E N T**

10 Remove lines 8-10 and insert:

11 Projects; amending s. 367.022,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 491 (2016)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Finance & Tax Committee  
2 Representative Smith offered the following:

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

5 Remove lines 223-241  
6  
7

8 -----  
9 **T I T L E A M E N D M E N T**

10 Remove lines 27-29 and insert:  
11 date; amending s. 367.111, F.S.;





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 1009 Tax Exemption for Senior, Totally Permanently Disabled First Responders  
**SPONSOR(S):** Metz  
**TIED BILLS:** IDEN./SIM. BILLS: SJR 1194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Dugan <i>RD</i>	Langston <i>[Signature]</i>
2) Local & Federal Affairs Committee			

### SUMMARY ANALYSIS

The Florida Constitution provides for exemption from property taxes for some persons who are totally and permanently disabled, including certain military veterans, as well as widows and widowers, including the surviving spouse of certain military veterans and the surviving spouse of certain first responders.

The joint resolution proposes an amendment to the Florida Constitution to allow the Legislature, as provided by general law, to exempt from property taxes first responders who are age 65 or older and totally, permanently disabled as a result of an injury or injuries sustained in the line of duty. The first responder's disability must be determined by the United States Social Security Administration, and causal connection between the disability and service in the line of duty must be determined as provided by general law. The term "disability" does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.

The proposed constitutional amendment takes effect January 1, 2017, if approved by the voters.

The Revenue Estimating Conference has not reviewed the joint resolution. However, if approved by the electorate the joint resolution alone will have a zero impact on local government revenue due to the need for further implementation at the option of the Legislature.

Based on 2014 advertising costs, the Division of Elections within the Department of State has estimated the full publication costs for advertising the proposed constitutional amendment to be approximately \$151,742. This would be paid from non-recurring General Revenue funds.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Property Taxes in Florida**

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.<sup>1</sup> The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.<sup>2</sup> The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,<sup>3</sup> and it provides for specified assessment limitations, property classifications and exemptions.<sup>4</sup> After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.<sup>5</sup>

##### **Exemptions**

Case law precedent provides that the Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.<sup>6</sup>

Article VII, section 3(b) of the Florida Constitution provides for exemptions from property taxes for widows and widowers, blind persons, and persons who are totally and permanently disabled. The Legislature implemented this provision through various property tax exemptions in chapter 196, Florida Statutes. For example, s. 196.101, F.S., provides property tax exemptions for any real estate used and owned as a homestead by any quadriplegic, and any real estate used and owned as a homestead by a paraplegic, hemiplegic, or other totally and permanently disabled person who must use a wheelchair for mobility or who is legally blind.<sup>7</sup> Generally, in order to qualify for an exemption as a "totally and permanently disabled person", he or she must submit evidence of such disability as certified by two licensed physicians of this state who are professionally unrelated, by the United States Department of Veterans Affairs or its predecessor, or by the Social Security Administration.<sup>8</sup>

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

---

<sup>1</sup> Fla. Const. art. VII, s. 1(a).

<sup>2</sup> Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>3</sup> Fla. Const., art. VII, s. 4.

<sup>4</sup> Fla. Const. art. VII, ss. 3, 4, and 6.

<sup>5</sup> s. 196.031, F.S.

<sup>6</sup> *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

<sup>7</sup> s. 196.101(1)-(2), F.S.

<sup>8</sup> s. 196.012(11), F.S.

Article VII, section 6 also authorizes the Legislature to provide, by general law, ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces, as well as the surviving spouse of a first responder<sup>9</sup> who died in the line of duty.<sup>10</sup> This constitutional provision was implemented<sup>11</sup> by the Legislature in s. 196.081, F.S. The Constitution defines "first responder" as a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic.<sup>12</sup> The term is further defined in general law to mean:

- a law enforcement officer or correctional officer as defined in s. 943.10,
- a firefighter as defined in s. 633.102,
- or an emergency medical technician or paramedic as defined in s. 401.23 who is a full-time paid employee, part-time paid employee, or unpaid volunteer.<sup>13</sup>

The Constitution defines "in the line of duty" as arising out of an in the actual performance of duty required by employment as a first responder,<sup>14</sup> and the term is further defined in general law to include:

- engaging in law enforcement;
- performing an activity relating to fire suppression and prevention;
- responding to a hazardous material emergency;
- performing rescue activity;
- providing emergency medical services;
- performing disaster relief activity;
- otherwise engaging in emergency response activity; or
- engaging in a training exercise related to any of the events or activities enumerated in this subparagraph if the training has been authorized by the employing entity.<sup>15</sup>

### **United States Social Security Administration**

The Social Security Administration (SSA) administers two programs that provide benefits based on disability: the Social Security disability insurance program (title II of the Social Security Act (the Act)) and the supplemental security income (SSI) program (title XVI of the Act).<sup>16</sup> Title II provides for payment of disability benefits to individuals who are "insured" under the Act by virtue of their contributions to the Social Security trust fund through the Social Security tax on their earnings, as well as to certain disabled dependents of insured individuals.<sup>17</sup> Title XVI provides SSI payments to disabled individuals who have limited income and resources.<sup>18</sup>

#### Definition of Disability

The Act and SSA's implementing regulations prescribe rules for deciding if an individual is "disabled." For all individuals applying for disability benefits under title II, and for adults applying under title XVI, the definition of disability is the same. The law defines disability as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which

---

<sup>9</sup> Fla. Const. art. VII, s. 6(f).

<sup>10</sup> "See s. 196.081(6)(c), F.S.

<sup>11</sup> Ch. 2012-54, Laws of Fla

<sup>12</sup> Fla. Const. art. VII, s 6(f)(3)a.

<sup>13</sup> s. 196.081(6)(c)1., F.S.

<sup>14</sup> Fla. Const. art. VII, s. (6)(f)(3)b.

<sup>15</sup> s. 196.081(6)(c)2., F.S.

<sup>16</sup> United States Social Security Administration website, available at: <https://www.ssa.gov/disability/professionals/bluebook/general-info.htm> (last viewed January 15, 2016).

<sup>17</sup> Id.

<sup>18</sup> Id.

can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.<sup>19</sup>

### The Disability Determination Process

Most disability claims are initially processed through a network of local Social Security field offices and State agencies (usually called disability determination services, or DDSs). SSA representatives in the field offices obtain applications for disability benefits and verify nonmedical eligibility requirements, which may include age, employment, marital status, citizenship/residency and Social Security coverage information.<sup>20</sup> Then, the field office sends the case to a DDS for disability evaluation. The DDSs are responsible for developing medical evidence and rendering the initial determination on whether the claimant is disabled under the law.<sup>21</sup> After completing its initial development, the DDS makes the disability determination and returns the case to the field office. The field office takes appropriate action depending on whether the claim is allowed or denied. If the DDS finds the claimant disabled, SSA will complete any outstanding non-disability development, compute the benefit amount, and begin paying benefits. If the claimant is found not disabled, the file is retained in the field office in case the claimant decides to appeal the determination.

### Proposed Changes

The joint resolution proposes an amendment to the Florida Constitution to allow the Legislature, as provided by general law, to exempt from property taxes first responders who are age 65 or older and totally, permanently disabled as a result of an injury or injuries sustained in the line of duty. The exemption applies to the property tax otherwise owed on homestead property, and may be the total amount or a portion.

The first responder's disability must be determined by the United States Social Security Administration.

Causal connection between the disability and service in the line of duty must be established by the applicant in order to qualify for the exemption. The term "disability" does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease. General law implementation is required to establish a framework for making determinations of causal connection and disallowed chronic conditions and diseases.

The proposed constitutional amendment takes effect January 1, 2017, if approved by the voters.

## B. SECTION DIRECTORY:

Not applicable to joint resolutions.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

Article XI, s. 5(d) of the State Constitution, requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper

---

<sup>19</sup> Id.

<sup>20</sup> United States Social Security Administration website, available at: <https://www.ssa.gov/disability/professionals/bluebook/general-info.htm> (last viewed January 15, 2016).

<sup>21</sup> In Florida, the disability determination services are the responsibility of the Department of Health (Division of Disability Determinations).

is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The Division of Elections (division) within the Department of State estimates the full publication costs for advertising the proposed amendment to be approximately \$135.97 per word, for a total publishing cost of approximately \$151,742.52.<sup>22</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference has not reviewed the joint resolution. However, if approved by the electorate the joint resolution alone will have a zero impact on local government revenue due to the need for further implementation at the option of the Legislature.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

If the proposed amendment is approved by the electorate and implemented by the Legislature, first responders with certain disabilities sustained in the line of duty would be eligible to receive property tax relief.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.<sup>23</sup> The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.<sup>24</sup>

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose. Without an effective date, the amendment becomes effective on the first Tuesday after the first Monday in the January following the election, which will be January 3, 2017. However, the joint resolution provides an effective date of January 1, 2017.

**B. RULE-MAKING AUTHORITY:**

None.

---

<sup>22</sup> Department of State, Agency Analysis 2016 HJR 811 (December 21, 2015)

<sup>23</sup> Art. XI, s. 1 of the Florida Constitution.

<sup>24</sup> Art. XI, s. 5 of the Florida Constitution.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of a new section in Article XII of the State Constitution to authorize a first responder, who is age 65 or older and totally permanently disabled as a result of an injury sustained in the line of duty, to receive a discount on ad valorem taxes assessed on homestead property, if authorized by general law, and to provide an effective date.

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

That the following amendment to Section 6 of Article VII and the creation of a new section in Article XII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.-

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for

27 special benefits, up to the assessed valuation of twenty-five  
 28 thousand dollars and, for all levies other than school district  
 29 levies, on the assessed valuation greater than fifty thousand  
 30 dollars and up to seventy-five thousand dollars, upon  
 31 establishment of right thereto in the manner prescribed by law.  
 32 The real estate may be held by legal or equitable title, by the  
 33 entireties, jointly, in common, as a condominium, or indirectly  
 34 by stock ownership or membership representing the owner's or  
 35 member's proprietary interest in a corporation owning a fee or a  
 36 leasehold initially in excess of ninety-eight years. The  
 37 exemption shall not apply with respect to any assessment roll  
 38 until such roll is first determined to be in compliance with the  
 39 provisions of section 4 by a state agency designated by general  
 40 law. This exemption is repealed on the effective date of any  
 41 amendment to this Article which provides for the assessment of  
 42 homestead property at less than just value.

43 (b) Not more than one exemption shall be allowed any  
 44 individual or family unit or with respect to any residential  
 45 unit. No exemption shall exceed the value of the real estate  
 46 assessable to the owner or, in case of ownership through stock  
 47 or membership in a corporation, the value of the proportion  
 48 which the interest in the corporation bears to the assessed  
 49 value of the property.

50 (c) By general law and subject to conditions specified  
 51 therein, the Legislature may provide to renters, who are  
 52 permanent residents, ad valorem tax relief on all ad valorem tax



53 levies. Such ad valorem tax relief shall be in the form and  
 54 amount established by general law.

55 (d) The legislature may, by general law, allow counties or  
 56 municipalities, for the purpose of their respective tax levies  
 57 and subject to the provisions of general law, to grant either or  
 58 both of the following additional homestead tax exemptions:

59 (1) An exemption not exceeding fifty thousand dollars to  
 60 any person who has the legal or equitable title to real estate  
 61 and maintains thereon the permanent residence of the owner and  
 62 who has attained age sixty-five and whose household income, as  
 63 defined by general law, does not exceed twenty thousand dollars;  
 64 or

65 (2) An exemption equal to the assessed value of the  
 66 property to any person who has the legal or equitable title to  
 67 real estate with a just value less than two hundred and fifty  
 68 thousand dollars and who has maintained thereon the permanent  
 69 residence of the owner for not less than twenty-five years and  
 70 who has attained age sixty-five and whose household income does  
 71 not exceed the income limitation prescribed in paragraph (1).

72  
 73 The general law must allow counties and municipalities to grant  
 74 these additional exemptions, within the limits prescribed in  
 75 this subsection, by ordinance adopted in the manner prescribed  
 76 by general law, and must provide for the periodic adjustment of  
 77 the income limitation prescribed in this subsection for changes  
 78 in the cost of living.

79 (e) Each veteran who is age 65 or older who is partially  
 80 or totally permanently disabled shall receive a discount from  
 81 the amount of the ad valorem tax otherwise owed on homestead  
 82 property the veteran owns and resides in if the disability was  
 83 combat related and the veteran was honorably discharged upon  
 84 separation from military service. The discount shall be in a  
 85 percentage equal to the percentage of the veteran's permanent,  
 86 service-connected disability as determined by the United States  
 87 Department of Veterans Affairs. To qualify for the discount  
 88 granted by this subsection, an applicant must submit to the  
 89 county property appraiser, by March 1, an official letter from  
 90 the United States Department of Veterans Affairs stating the  
 91 percentage of the veteran's service-connected disability and  
 92 such evidence that reasonably identifies the disability as  
 93 combat related and a copy of the veteran's honorable discharge.  
 94 If the property appraiser denies the request for a discount, the  
 95 appraiser must notify the applicant in writing of the reasons  
 96 for the denial, and the veteran may reapply. The Legislature  
 97 may, by general law, waive the annual application requirement in  
 98 subsequent years. This subsection is self-executing and does not  
 99 require implementing legislation.

100 (f) By general law and subject to conditions and  
 101 limitations specified therein, the Legislature may provide ad  
 102 valorem tax relief equal to the total amount or a portion of the  
 103 ad valorem tax otherwise owed on homestead property to ~~the~~:

104 (1) The surviving spouse of a veteran who died from

105 service-connected causes while on active duty as a member of the  
 106 United States Armed Forces.

107 (2) The surviving spouse of a first responder who died in  
 108 the line of duty.

109 (3) A first responder who is age 65 or older and totally  
 110 permanently disabled as a result of an injury or injuries  
 111 sustained in the line of duty. A first responder's total  
 112 permanent disability must first be determined by the United  
 113 States Social Security Administration. Causal connection between  
 114 a disability and service in the line of duty shall not be  
 115 presumed but must be determined as provided by general law. For  
 116 purposes of this paragraph, the term "disability" does not  
 117 include a chronic condition or chronic disease, unless the  
 118 injury sustained in the line of duty was the sole cause of the  
 119 chronic condition or chronic disease.

120  
 121 As used in this subsection and as further defined by general  
 122 law, the term:

123 ~~a.~~ "first responder" means a law enforcement officer, a  
 124 correctional officer, a firefighter, an emergency medical  
 125 technician, or a paramedic, and the term:

126 ~~b.~~ "in the line of duty" means arising out of and in the  
 127 actual performance of duty required by employment as a first  
 128 responder.

129 ARTICLE XII

130 SCHEDULE

131 Tax exemption for senior, totally permanently disabled  
 132 first responders.—The amendment to Section 6 of Article VII  
 133 relating to a discount on ad valorem taxes assessed on homestead  
 134 property for first responders, who are age 65 or older and  
 135 totally permanently disabled as a result of injuries sustained  
 136 in the line of duty, takes effect January 1, 2017.

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

139 CONSTITUTIONAL AMENDMENT

140 ARTICLE VII, SECTION 6


141 ARTICLE XII

142 TAX EXEMPTION FOR SENIOR, TOTALLY PERMANENTLY DISABLED  
 143 FIRST RESPONDERS.—Proposing an amendment to the State  
 144 Constitution to authorize a first responder, who is age 65 or  
 145 older and totally permanently disabled as a result of injuries  
 146 sustained in the line of duty, to receive a discount on ad  
 147 valorem taxes assessed on homestead property, if authorized by  
 148 general law. If approved by voters, the amendment takes effect  
 149 January 1, 2017.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1015 Determination of Maximum Millage Rates  
**SPONSOR(S):** Nuñez  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1222

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Dugan RD	Langston 
2) Local Government Affairs Subcommittee			
3) Local & Federal Affairs Committee			

**SUMMARY ANALYSIS**

Property tax rates (i.e., millage rates) are set by local government governing boards each year and applied to local property tax bases to generate funding for local government uses. Since 2007, Florida law provides a formula to determine millage rates each year which may not be exceeded by a county, municipal, or special district governing board except by certain extraordinary votes. The formula sets the maximum millage that can be levied by simple majority vote at the “rolled back rate” calculated assuming the previous year’s maximum tax rate was levied, then adjusted by the change in Florida per capita personal income. The actual tax rate is commonly lower than the maximum. Over time, the simple majority maximum tax rate described above has, for many jurisdictions, reached levels that have no practical effect. For example, the simple majority maximum in many counties and cities exceeds the constitutional limit of 10 mills for county or municipal purposes.

The bill changes the formula for calculating the simple majority vote maximum millage rate. Instead of using a rolled back rate assuming the previous year’s maximum rate was levied, the formula would use a rolled back rate using the prior year’s actual levy. The formula change will reduce the simple majority maximum tax rate for most counties, cities, and special districts.

The Revenue Estimating Conference has not met to evaluate this bill. Staff estimates that the impact on county, municipal, and special district property taxes, while indeterminate, will be negative to the extent that governments cannot achieve the extraordinary votes they might need to exceed the lower maximum tax rates.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Ad Valorem Taxation Overview**

The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts. The amount of tax levied is based on the taxable value of real and tangible personal property as of January 1 of each year and the tax rate (millage rate) applied to such value.<sup>1</sup> The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.<sup>2</sup>

The Florida Constitution requires that "all ad valorem taxation shall be at a uniform rate within each taxing unit . . ."<sup>3</sup> Generally, this requirement means that a taxing authority may not levy different rates on property located in different geographic areas within the taxing authority nor levy different rates on different types of property.

With the exception of the ad valorem tax and other home-rule revenue sources, local governments are dependent on the Legislature for authority to levy any other form of taxation. The property tax is the largest single tax revenue source for local governments in Florida, with approximately \$28.3 billion levied in Fiscal Year 2015-16.<sup>4</sup> Ad valorem property tax revenues are also the primary tax revenue source for school districts. Of the \$28.3 billion levied statewide for FY 2015-16, school districts levied approximately \$12.0 billion in property taxes.<sup>5</sup>

The "taxable value" of real and tangible personal property is the fair market value, or "just value," of the real and tangible personal property adjusted for any exclusions, differentials, or exemptions allowed by the Constitution or the statutes.<sup>6</sup> The Florida Constitution strictly limits the Legislature's authority to provide exemptions or adjustments to fair market value.<sup>7</sup>

##### **Millage Rates**

Property tax rates, or millage rates, are set by each taxing authority and vary throughout the state. Ad valorem property tax revenues result from multiplying the millage rate adopted by counties, municipalities, and school boards, by the taxable value of property within that jurisdiction. The Florida Constitution limits the millage rates that may be levied, depending on the type of taxing authority.

##### Counties, Municipalities and Schools

---

<sup>1</sup> Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items . . .) capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>2</sup> Fla. Const. art. VII, s. 1(a).

<sup>3</sup> Fla. Const. art. VII, s. 2.

<sup>4</sup> *Florida Tax Handbook*, 2015.

<sup>5</sup> *Florida Tax Handbook*, 2015.

<sup>6</sup> Sections 192.001(2) and (16), F.S., define the terms "assessed value" and "taxable value." "Assessed value" is generally synonymous with "just value" unless a constitutional exception such as Save Our Homes applies to reduce the value of the property. "Taxable value" is the assessed value minus any applicable exemptions such as the \$25,000 homestead exemption. "Just value" is the estimated market value of the property.

<sup>7</sup> Fla Const. art. VII, s. 4.

Counties, municipalities, and school districts are each limited to levy up to ten mills (or one percent).<sup>8</sup> By referendum, local voters may authorize counties, municipalities, and school districts to levy additional mills above the ten mill limitation to repay bonds to finance capital projects and for other purposes for a period of no longer than two years.<sup>9</sup> Counties providing municipal services may also levy up to an additional ten mills above the ten mill county limitation within those areas receiving municipal-type services.

### Special Districts

Independent special district millage rates are limited by the law establishing such districts and must be approved by the voters within the district. Dependent special district millage rates are included in the limitation applicable to the authority to which they are dependent. Up to one mill may be levied for water management purposes, except in northwest Florida where the limit is 0.05 mill.<sup>10</sup>

### Schools

The Florida Constitution requires that the Legislature provide by law for a uniform, efficient, safe, secure and high quality system of free public schools. The Legislature accomplishes this by providing for the funding of public schools through a combination of ad valorem taxes and other state revenues. In addition to the constitutional millage limitation, school districts are subject to certain statutory requirements in order to participate in the state's K-12 funding program, called the Florida Education Finance Program (FEFP).<sup>11</sup>

### **Limits on Growth of Property Tax Levies**

In 2007, the Legislature enacted statutory changes<sup>12</sup> that established a maximum millage rate by requiring most taxing authorities to reduce their millage rates below their rolled back rates.<sup>13</sup> The "rolled back rate" is the tax rate that will produce the same amount of tax revenue for the current year that was produced the previous year, after making allowances for some tax base changes.<sup>14</sup> Exceptions were made for certain fiscally limited governments and for certain types of activities. The same legislation created a formula to determine a maximum millage rate (and implicitly a maximum revenue) that could be levied by a county, municipal, or special district governing board by simple majority vote. Exceeding the maximum would require the governing board to achieve certain extraordinary votes.

The maximum millage rate that most non-school taxing authorities can levy by simple majority vote is a rolled back rate based on the amount of taxes which would have been levied in the prior year if the maximum millage rate had been applied in that year, adjusted by the change in Florida per capita personal income.<sup>15</sup> Local governments are allowed to override the prescribed rate reductions by extraordinary votes of their governing boards or by referenda of the electorate. A higher rate may be adopted only under the following conditions:

1. A rate of not more than 110 percent of the rolled-back rate based on the previous year's maximum millage rate, adjusted for change in per capita Florida personal income, may be adopted if approved by a two-thirds vote of the membership of the governing body of the taxing authority; or
2. A rate in excess of 110 percent may be adopted if approved by a unanimous vote of the membership of the governing body of the taxing authority or by a three-fourths vote of the

---

<sup>8</sup> Fla. Const. art. VII, s. 9. A rate of one mill may be expressed as follows: 1 mill = 0.1 cent or \$0.001; \$1 per \$1,000; or 0.1%.

<sup>9</sup> Fla. Const. art. VII, s. 9.

<sup>10</sup> Fla. Const. art. VII, s.9.

<sup>11</sup> s. 1011.71, F.S.

<sup>12</sup> Ch. 2007-321, Laws of Fla.

<sup>13</sup> s. 200.065(5), F.S.

<sup>14</sup> s. 200.065(1), F.S.

<sup>15</sup> s. 200.065(5), F.S. Calculation of Florida per capita personal income is to be provided by the Office of Economic and Demographic Research, per s. 200.001(8)(i), F.S.



membership of the governing body if the governing body has nine or more members, or if the rate is approved by a referendum.<sup>16</sup>

In 2015, of the 574 local governments subject to simple majority maximum millage rates, 51 (8.9 percent) required a two-thirds vote to approve their adopted millages, and six (one percent) required a unanimous vote.<sup>17</sup> The total taxes levied by these 574 (less one extreme outlier) were almost 27 percent below the taxes that could have been levied at their simple majority maximum tax rates.<sup>18</sup> Thirty-five counties and 64 municipalities had maximum rates in excess of the 10 mill constitutional limit for county or municipal purposes.<sup>19</sup>

### **Proposed Changes**

The bill changes the maximum millage rate that a taxing authority can levy to a rolled back rate based on the amount of taxes the taxing authority actually levied in the prior year.

The bill may heighten the voting requirement if a local government needs to attain in order to override the prescribed rate reductions by extraordinary vote.

The effective date of the bill is July 1, 2016.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 200.065, F.S., to change the maximum millage rate of a local government taxing authority;

Section 2. Provides an effective date.

## **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:

---

<sup>16</sup> s. 200.065(5)(a), F.S.

<sup>17</sup> Department of Revenue, 2015 Maximum Millage Compliance Reports, found at <ftp://sdrftp03.dor.state.fl.us/MaximumMillageData/MillCapComp011516.pdf>

<sup>18</sup> Department of Revenue, 2015 Comparison of Property Taxes Levied, found at <ftp://sdrftp03.dor.state.fl.us/MaximumMillageData/comp15.pdf>

<sup>19</sup> Department of Revenue, 2015 Maximum Millage Compliance Reports, found at <ftp://sdrftp03.dor.state.fl.us/MaximumMillageData/MillCapComp011516.pdf>

The Revenue Estimating Conference has not met to evaluate this bill. Staff estimates that the impact on county, municipal, and special district property taxes, while indeterminate, will be negative to the extent that governments cannot achieve the extraordinary votes they might need to exceed the lower maximum tax rates.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Owners of property in a taxing authority that reduces its millage rate may experience a lower property tax liability.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Subsection 18(b) of article VII of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the authority that counties or municipalities have to raise revenues in the aggregate. It is unclear whether the requirement for a supermajority vote to exceed the lower millage limitations resulting from this bill represents a reduction of revenue raising authority as contemplated by subsection 18(b). If the purpose of subsection 18(b) is to determine whether the amount of potential revenue available to counties and municipalities was reduced, then this bill does not reduce that potential and the requirement for a two-thirds vote is not applicable. However, if the purpose of subsection 18(b) is to look at the method for adopting a millage rate, then the provisions of this bill requiring a supermajority vote to adopt a millage rate that could currently be adopted by a majority vote may be considered a mandate requiring a two-thirds vote of the Legislature. There is no legal authority to guide the Legislature in making a determination regarding this issue.

2. Other:

None.

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 determination of maximum millage  
3           rates; amending s. 200.065, F.S.; revising the method  
4           for computing the rolled-back rate for purposes of  
5           determining the maximum millage rate for certain local  
6           governments; providing an effective date.

7  
8   Be It Enacted by the Legislature of the State of Florida:

9  
10           Section 1. Paragraph (a) of subsection (5) of section  
11           200.065, Florida Statutes, is amended to read:

12           200.065 Method of fixing millage.—

13           (5) In each fiscal year:

14           (a) The maximum millage rate that a county, municipality,  
15           special district dependent to a county or municipality,  
16           municipal service taxing unit, or independent special district  
17           may levy is a rolled-back rate based on the amount of taxes  
18           actually ~~which would have been~~ levied in the prior year ~~if the~~  
19           ~~maximum millage rate had been applied~~, adjusted for change in  
20           per capita Florida personal income, unless a higher rate was  
21           adopted, in which case the maximum is the adopted rate. The  
22           maximum millage rate applicable to a county authorized to levy a  
23           county public hospital surtax under s. 212.055 and which did so  
24           in fiscal year 2007 shall exclude the revenues required to be  
25           contributed to the county public general hospital in the current  
26           fiscal year for the purposes of making the maximum millage rate

27 calculation, but shall be added back to the maximum millage rate  
 28 allowed after the roll back has been applied, the total of which  
 29 shall be considered the maximum millage rate for such a county  
 30 for purposes of this subsection. The revenue required to be  
 31 contributed to the county public general hospital for the  
 32 upcoming fiscal year shall be calculated as 11.873 percent times  
 33 the millage rate levied for countywide purposes in fiscal year  
 34 2007 times 95 percent of the preliminary tax roll for the  
 35 upcoming fiscal year. A higher rate may be adopted only under  
 36 the following conditions:

37 1. A rate of not more than 110 percent of the rolled-back  
 38 rate based on the previous year's maximum millage rate, adjusted  
 39 for change in per capita Florida personal income, may be adopted  
 40 if approved by a two-thirds vote of the membership of the  
 41 governing body of the county, municipality, or independent  
 42 district; or

43 2. A rate in excess of 110 percent may be adopted if  
 44 approved by a unanimous vote of the membership of the governing  
 45 body of the county, municipality, or independent district or by  
 46 a three-fourths vote of the membership of the governing body if  
 47 the governing body has nine or more members, or if the rate is  
 48 approved by a referendum.

49  
 50 Any unit of government operating under a home rule charter  
 51 adopted pursuant to ss. 10, 11, and 24, Art. VIII of the State  
 52 Constitution of 1885, as preserved by s. 6(e), Art. VIII of the

53 State Constitution of 1968, which is granted the authority in  
 54 the State Constitution to exercise all the powers conferred now  
 55 or hereafter by general law upon municipalities and which  
 56 exercises such powers in the unincorporated area shall be  
 57 recognized as a municipality under this subsection. For a  
 58 downtown development authority established before the effective  
 59 date of the 1968 State Constitution which has a millage that  
 60 must be approved by a municipality, the governing body of that  
 61 municipality shall be considered the governing body of the  
 62 downtown development authority for purposes of this subsection.

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