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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2014	.	
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	.	
	.	

The Committee on Communications, Energy, and Public Utilities (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

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



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11 for water facilities and sewage facilities.

12 Section 2. Present subsections (9) through (12) of section
13 367.022, Florida Statutes, are renumbered as subsections (10)
14 through (13), respectively, and a new subsection (9) is added to
15 that section, to read:

16 367.022 Exemptions.—The following are not subject to
17 regulation by the commission as a utility nor are they subject
18 to the provisions of this chapter, except as expressly provided:

19 (9) A person who resells water service to his or her
20 tenants or to individually metered residents for a fee that does
21 not exceed the actual purchase price plus:

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

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

24 Section 3. Present subsections (7) and (8) of section
25 367.081, Florida Statutes, are renumbered as subsections (8) and
26 (9), respectively, subsections (2) and (4) and present
27 subsection (7) of that section are amended, and a new subsection
28 (7) is added to that section, to read:

29 367.081 Rates; procedure for fixing and changing.—

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

33 1. In each ~~every~~ such proceeding, the commission shall
34 consider the value and quality of the service and the cost of
35 providing the service, which must ~~shall~~ include, but need not be
36 limited to, debt interest; the requirements of the utility for
37 working capital; maintenance, depreciation, tax, and operating
38 expenses incurred in the operation of all property used and
39 useful in the public service; and a fair return on the



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40 investment of the utility in property used and useful in the
41 public service. However, the commission shall not allow the
42 inclusion of contributions-in-aid-of-construction in the rate
43 base of a any utility during a rate proceeding ~~or, nor shall the~~
44 ~~commission~~ impute prospective future contributions-in-aid-of-
45 construction against the utility's investment in property used
46 and useful in the public service. ~~and~~ Accumulated depreciation
47 on such contributions-in-aid-of-construction shall not be used
48 to reduce the rate base, and ~~nor shall~~ depreciation on such
49 contributed assets shall not be considered a cost of providing
50 utility service.

51 2. For purposes of such proceedings, the commission shall
52 consider utility property, including land acquired or facilities
53 constructed or to be constructed within a reasonable time in the
54 future, up to ~~not to exceed~~ 24 months after the end of the
55 historic base year used to set final rates unless a longer
56 period is approved by the commission, to be used and useful in
57 the public service, if:

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

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

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



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69 3. In determining the value and quality of water service
70 provided by a utility and whether such utility has satisfied its
71 obligation to provide water service to its customers, the
72 commission shall consider the extent to which the utility meets
73 secondary drinking water standards regarding taste, odor, color,
74 or corrosiveness adopted by the Department of Environmental
75 Protection and the local government. In making its
76 determination, the commission shall consider:

77 a. Testimony and evidence provided by customers and the
78 utility.

79 b. Complaints that relate to the secondary drinking water
80 standards which customers have filed during the past 5 years
81 with the commission, the Department of Environmental Protection,
82 the county health departments, or the applicable local
83 government.

84 c. The results of past tests required by the Department of
85 Environmental Protection or county health departments which
86 measure the utility's compliance with the applicable secondary
87 drinking water standards.

88 d. The results of other tests, if deemed necessary by the
89 commission.

90 4. In determining the value and quality of wastewater
91 service provided by a utility, the commission shall consider the
92 extent to which the utility provides wastewater service to its
93 customers which does not cause odor, noise, aerosol drift, or
94 lighting that adversely affects customers. In making its
95 determination, the commission shall consider:

96 a. Testimony and evidence provided by customers and the
97 utility.



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98 b. Complaints that relate to the alleged odor, noise,
99 aerosol drift, or lighting problem which customers have filed
100 during the past 5 years with any of the following:

101 (I) The commission;

102 (II) The Department of Environmental Protection;

103 (III) The county health departments; or

104 (IV) The local government.

105 5. If the commission determines that a utility provides
106 water service that does not meet the secondary water quality
107 standards of the Department of Environmental Protection and the
108 local government regarding taste, odor, color, or corrosiveness,
109 or that a utility provides wastewater service that adversely
110 affects customers due to odor, noise, aerosol drift, or
111 lighting, the utility shall provide the commission with
112 estimates of the costs and benefits of various solutions to the
113 problems. The utility shall meet with its customers to discuss
114 the costs and benefits of the various solutions and report to
115 the commission the conclusions of the meetings. The commission
116 shall adopt rules necessary to assess and enforce the utility's
117 compliance with this subparagraph. The rules shall prescribe
118 penalties, including fines and reduction of return on equity of
119 up to 100 basis points, if a utility fails to adequately address
120 or offer solutions to the water or wastewater problems.

121 6. A utility may recover its prudently incurred costs and
122 expenses to resolve deficiencies found by the commission
123 pursuant to this subsection or found by the Department of
124 Environmental Protection in a proceeding under chapter 403,
125 related to noncompliance with secondary drinking water standards
126 regarding taste, odor, color, or corrosiveness, or concerning



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127 wastewater service issues related to odor, noise, aerosol drift,
128 or lighting. Such costs shall be recoverable through a rate case
129 filed pursuant to this section or through a separate proceeding
130 initiated by petition of the utility. In its filing, the utility
131 shall describe the activities and costs projected or incurred to
132 resolve the deficiencies found by the commission or the
133 department. Such costs may be a result of action agreed upon by
134 the utility and the commission or the department or as a
135 consequence of a consent order.

136
137 Notwithstanding ~~the provisions of~~ this paragraph, the commission
138 shall approve rates for service which allow a utility to recover
139 from customers the full amount of environmental compliance
140 costs. Such rates may not include charges for allowances for
141 funds prudently invested or similar charges. For purposes of
142 this requirement, the term "environmental compliance costs"
143 includes all reasonable expenses and fair return on any prudent
144 investment incurred by a utility in complying with the
145 requirements or conditions contained in any permitting,
146 enforcement, or similar decisions of the United States
147 Environmental Protection Agency, the Department of Environmental
148 Protection, a water management district, or any other
149 governmental entity with similar regulatory jurisdiction.

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

154 (c) In establishing rates for a utility, the commission may
155 authorize the creation of a utility reserve fund. The commission



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156 shall adopt rules to govern the fund, including, but not limited
157 to, rules relating to expenses for which the fund may be used,
158 segregation of reserve account funds, requirements for a capital
159 improvement plan, and requirements for commission authorization
160 before disbursements are made from the reserve fund.

161 (4) (a) On or before March 31 of each year, the commission
162 by order shall establish a price increase or decrease index for
163 major categories of operating costs incurred by utilities
164 subject to its jurisdiction reflecting the percentage of
165 increase or decrease in such costs from the most recent 12-month
166 historical data available. The commission by rule shall
167 establish the procedure to be used in determining such indices
168 and a procedure by which a utility, without further action by
169 the commission, or the commission on its own motion, may
170 implement an increase or decrease in its rates based upon the
171 application of the indices to the amount of the major categories
172 of operating costs incurred by the utility during the
173 immediately preceding calendar year, except to the extent of any
174 disallowances or adjustments for those expenses of that utility
175 in its most recent rate proceeding before the commission. The
176 rules shall provide that, upon a finding of good cause,
177 including inadequate service, the commission may order a utility
178 to refrain from implementing a rate increase hereunder unless
179 implemented under a bond or corporate undertaking in the same
180 manner as interim rates may be implemented under s. 367.082. A
181 utility may not use this procedure between the official filing
182 date of the rate proceeding and 1 year thereafter, unless the
183 case is completed or terminated at an earlier date. A utility
184 may not use this procedure to increase any operating cost for



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185 which an adjustment has been or could be made under paragraph
186 (b), or to increase its rates by application of a price index
187 other than the most recent price index authorized by the
188 commission at the time of filing.

189 (b) Upon verified notice to the commission 45 days before
190 implementation of the increase or decrease, and without a
191 hearing, the approved rates of a utility shall automatically
192 increase or decrease. Such notice shall inform the commission
193 that the utility's costs for a specified expense item have
194 changed.

195 1. The new rates shall reflect, on an amortized or annual
196 basis, as appropriate, the cost or amount of change in the cost
197 of the specified expense item. The new rates may not reflect the
198 costs of a specified expense item already included in the rates
199 of a utility. Specified expense items eligible for automatic
200 increase or decrease of a utility's rates include, but are not
201 limited to:

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

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

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

209 d. The fees charged by the Department of Environmental
210 Protection in connection with the National Pollutant Discharge
211 Elimination System permit program.

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



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214 f. Costs incurred for water quality or wastewater quality
215 testing required by the Department of Environmental Protection.
216 g. The fees charged for wastewater sludge disposal.
217 h. A loan service fee or loan origination fee associated
218 with a loan related to an eligible project. The commission shall
219 adopt rules governing the determination of eligible projects,
220 which shall be limited to those projects associated with new
221 infrastructure or improvements to existing infrastructure needed
222 to achieve or maintain compliance with federal, state, and local
223 governmental primary or secondary drinking water standards or
224 wastewater treatment standards that relate to:
225 (I) The provision of water or wastewater service for
226 existing customers;
227 (II) The remediation or prevention of a violation of
228 federal, state, and local governmental primary or secondary
229 health standards;
230 (III) The replacement or upgrade of aging water or
231 wastewater infrastructure if needed to achieve or maintain
232 compliance with federal, state, and local governmental primary
233 or secondary drinking water regulations; or
234 (IV) Projects consistent with the most recent long-range
235 plan of the utility on file with the commission. Eligible
236 projects do not include projects primarily intended to serve
237 future growth.
238 i. Costs incurred for a tank inspection required by the
239 Department of Environmental Protection or a local governmental
240 authority.
241 j. Operator and distribution license fees required by the
242 Department of Environmental Protection or a local governmental



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243 authority.
244 k. Water or wastewater operating permit fees charged by the
245 Department of Environmental Protection or a local governmental
246 authority.
247 1. Consumptive or water use permit fees charged by a water
248 management district.
249 2. A utility may not use the procedure under this paragraph
250 to increase or decrease its rates as a result of an increase or
251 decrease in a specific expense item which occurred more than 12
252 months before the filing by the utility.
253 3. The commission may establish by rule additional specific
254 expense items that cause an automatic increase or decrease in a
255 utility's rates as provided in this paragraph. To be eligible
256 for such treatment, an additional expense item shall be imposed
257 upon the utility by a federal, state, or local law, rule, order,
258 or notice and shall be outside the control of the utility. If
259 the commission exercises its authority to establish such rule,
260 the commission shall, at least once every 5 years, review the
261 rule and determine if each expense item should continue to be
262 cause for the automatic increase or decrease of a utility's
263 rates, or if any additional items should become cause for the
264 automatic increase or decrease of a utility's rates as provided
265 in this paragraph ~~The approved rates of any utility which~~
266 ~~receives all or any portion of its utility service from a~~
267 ~~governmental authority or from a water or wastewater utility~~
268 ~~regulated by the commission and which redistributes that service~~
269 ~~to its utility customers shall be automatically increased or~~
270 ~~decreased without hearing, upon verified notice to the~~
271 ~~commission 45 days prior to its implementation of the increase~~



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272 ~~or decrease that the rates charged by the governmental authority~~
273 ~~or other utility have changed. The approved rates of any utility~~
274 ~~which is subject to an increase or decrease in the rates or fees~~
275 ~~that it is charged for electric power, the amount of ad valorem~~
276 ~~taxes assessed against its used and useful property, the fees~~
277 ~~charged by the Department of Environmental Protection in~~
278 ~~connection with the National Pollutant Discharge Elimination~~
279 ~~System Program, or the regulatory assessment fees imposed upon~~
280 ~~it by the commission shall be increased or decreased by the~~
281 ~~utility, without action by the commission, upon verified notice~~
282 ~~to the commission 45 days prior to its implementation of the~~
283 ~~increase or decrease that the rates charged by the supplier of~~
284 ~~the electric power or the taxes imposed by the governmental~~
285 ~~authority, or the regulatory assessment fees imposed upon it by~~
286 ~~the commission have changed. The new rates authorized shall~~
287 ~~reflect the amount of the change of the ad valorem taxes or~~
288 ~~rates imposed upon the utility by the governmental authority,~~
289 ~~other utility, or supplier of electric power, or the regulatory~~
290 ~~assessment fees imposed upon it by the commission. The approved~~
291 ~~rates of any utility shall be automatically increased, without~~
292 ~~hearing, upon verified notice to the commission 45 days prior to~~
293 ~~implementation of the increase that costs have been incurred for~~
294 ~~water quality or wastewater quality testing required by the~~
295 ~~Department of Environmental Protection. The new rates authorized~~
296 ~~shall reflect, on an amortized basis, the cost of, or the amount~~
297 ~~of change in the cost of, required water quality or wastewater~~
298 ~~quality testing performed by laboratories approved by the~~
299 ~~Department of Environmental Protection for that purpose. The new~~
300 ~~rates, however, shall not reflect the costs of any required~~



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301 ~~water quality or wastewater quality testing already included in~~
302 ~~a utility's rates. A utility may not use this procedure to~~
303 ~~increase its rates as a result of water quality or wastewater~~
304 ~~quality testing or an increase in the cost of purchased water~~
305 ~~services, sewer services, or electric power or in assessed ad~~
306 ~~valorem taxes, which increase was initiated more than 12 months~~
307 ~~before the filing by the utility.~~

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

311 (c) Before implementing a change in rates under this
312 subsection, the utility must ~~shall~~ file an affirmation under
313 oath as to the accuracy of the figures and calculations upon
314 which the change in rates is based, stating that the change will
315 not cause the utility to exceed the range of its last authorized
316 rate of return on equity. A person who ~~Whoever~~ makes a false
317 statement in the affirmation required under this subsection
318 ~~hereunder~~, which statement he or she does not believe to be true
319 in regard to any material matter, commits ~~is guilty of~~ a felony
320 of the third degree, punishable as provided in s. 775.082, s.
321 775.083, or s. 775.084.

322 (d) If, within 15 months after the filing of a utility's
323 annual report required by s. 367.121, the commission finds that
324 the utility exceeded the range of its last authorized rate of
325 return on equity after an adjustment in rates as authorized by
326 this subsection was implemented within the year for which the
327 report was filed or was implemented in the preceding year, the
328 commission may order the utility to refund, with interest, the
329 difference to the ratepayers and adjust rates accordingly. This



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330 provision does ~~shall not be construed to~~ require a bond or
331 corporate undertaking not otherwise required.

332 (e) Notwithstanding anything in this section ~~herein~~ to the
333 contrary, a utility may not adjust its rates under this
334 subsection more than two times in any 12-month period. For the
335 purpose of this paragraph, a combined application or
336 simultaneously filed applications that were filed under the
337 provisions of paragraphs (a) and (b) are ~~shall be~~ considered one
338 rate adjustment.

339 (f) At least annually, the commission shall ~~may regularly,~~
340 ~~not less often than once each year,~~ establish by order a
341 leverage formula or formulae that reasonably reflect the range
342 of returns on common equity for an average water or wastewater
343 utility and that ~~which,~~ for purposes of this section, are ~~shall~~
344 ~~be~~ used to calculate the last authorized rate of return on
345 equity for a ~~any~~ utility which otherwise would not have an ~~no~~
346 established rate of return on equity. In any other proceeding in
347 which an authorized rate of return on equity is to be
348 established, a utility, in lieu of presenting evidence on its
349 rate of return on common equity, may move the commission to
350 adopt the range of rates of return on common equity which is
351 ~~that has been~~ established under this paragraph.

352 (7) A water utility may file tariffs establishing a
353 surcharge, or other method for the automatic adjustment of its
354 rates, which shall provide for recovery of the prudently
355 incurred fixed costs consisting of depreciation and pretax
356 returns of certain system improvement projects, as approved by
357 the commission, which are completed and placed in service
358 between base rate proceedings. Such projects shall be for the



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359 specific purpose of achieving compliance with secondary drinking
360 water quality standards regarding taste, odor, color, or
361 corrosiveness. With respect to each tariff filed, the commission
362 shall prescribe the specific procedures to be followed in
363 establishing the sliding scale or other automatic adjustment
364 method.

365 (8)-(7) The commission shall determine the reasonableness of
366 rate case expenses and shall disallow all rate case expenses
367 determined to be unreasonable. A ~~No~~ rate case expense determined
368 to be unreasonable may not shall be paid by a consumer. In
369 determining the reasonable level of rate case expense, the
370 commission shall consider the extent to which a utility has used
371 ~~utilized~~ or failed to use ~~utilize~~ the provisions of paragraph
372 (4) (a) or paragraph (4) (b) and such other criteria as it may
373 establish by rule.

374 Section 4. Subsection (3) of section 367.0814, Florida
375 Statutes, is amended to read:

376 367.0814 Staff assistance in changing rates and charges;
377 interim rates.—

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

381 Section 5. Subsection (3) of section 403.8532, Florida
382 Statutes, is amended to read:

383 403.8532 Drinking water state revolving loan fund; use;
384 rules.—

385 (3) The department may make, or request that the
386 corporation make, loans, grants, and deposits to community water
387 systems, for-profit privately owned or investor-owned water



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388 systems, nonprofit transient noncommunity water systems, and
389 nonprofit nontransient noncommunity water systems to assist them
390 in planning, designing, and constructing public water systems,
391 ~~unless such public water systems are for profit privately owned~~
392 ~~or investor-owned systems that regularly serve 1,500 service~~
393 ~~connections or more within a single certified or franchised~~
394 ~~area. However, a for profit privately owned or investor-owned~~
395 ~~public water system that regularly serves 1,500 service~~
396 ~~connections or more within a single certified or franchised area~~
397 ~~may qualify for a loan only if the proposed project will result~~
398 ~~in the consolidation of two or more public water systems.~~ The
399 department may provide loan guarantees, purchase loan insurance,
400 and refinance local debt through the issue of new loans for
401 projects approved by the department. Public water systems may
402 borrow funds made available pursuant to this section and may
403 pledge any revenues or other adequate security available to them
404 to repay any funds borrowed.

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

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

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

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



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417 otherwise provided in this section.

418 Section 6. This act shall take effect July 1, 2014.

419

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

421 And the title is amended as follows:

422 Delete everything before the enacting clause

423 and insert:

424 A bill to be entitled

425 An act relating to water and wastewater utility

426 systems; creating s. 159.8105, F.S.; requiring the

427 Division of Bond Finance of the State Board of

428 Administration to review the allocation of private

429 activity bonds to determine the availability of

430 additional allocation or reallocation of bonds for

431 water facilities or sewage facilities; amending s.

432 367.022, F.S.; exempting from regulation by the

433 Florida Public Service Commission a person who resells

434 water service to certain tenants or residents up to a

435 specified cost; amending s. 367.081, F.S.;

436 establishing criteria for determining the quality of

437 water and wastewater services provided by a utility;

438 establishing a procedure to follow if the commission

439 determines that a utility has failed to provide water

440 and wastewater services that meet certain standards;

441 requiring the commission to adopt rules that include

442 fines; providing for recovery of costs prudently

443 incurred by a utility to address certain findings of

444 the commission or the Department of Environmental

445 Protection; authorizing the creation of a utility



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446 reserve fund to establish rates for a utility;
447 requiring the commission to adopt rules to govern such
448 fund; providing for the automatic increase or decrease
449 of approved rates under certain circumstances;
450 establishing criteria for adjusted rates; specifying
451 expense items that permit an automatic increase or
452 decrease in utility rates; providing standards to
453 allow the commission to establish, by rule, additional
454 specified expense items that cause an automatic
455 increase or decrease of utility rates; deleting
456 certain requirements for approved utility rates that
457 are automatically increased or decreased, upon notice
458 to the commission; deleting a prohibition to conform
459 to changes made by the act; authorizing a water
460 utility to establish a surcharge or other mechanism to
461 recover the prudently incurred fixed costs of certain
462 system improvement projects approved by the
463 commission; amending s. 367.0814, F.S.; conforming
464 cross-references to changes made by the act; amending
465 s. 403.8532, F.S.; authorizing the Department of
466 Environmental Protection to make, or to request that
467 the Florida Water Pollution Control Financing
468 Corporation make, loans, grants, and deposits to for-
469 profit privately owned or investor-owned water
470 systems, and deleting current restrictions on such
471 activities; providing an effective date.