

By Senator Hays

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

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

53
54 Be It Enacted by the Legislature of the State of Florida:

55
56 Section 1. Section 159.810, Florida Statutes, is created to
57 read:

58 159.810 Allocation of bonds for water and wastewater

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

63 Section 2. Paragraph (kkk) is added to subsection (7) of
64 section 212.08, Florida Statutes, to read:

65 212.08 Sales, rental, use, consumption, distribution, and
66 storage tax; specified exemptions.—The sale at retail, the
67 rental, the use, the consumption, the distribution, and the
68 storage to be used or consumed in this state of the following
69 are hereby specifically exempt from the tax imposed by this
70 chapter.

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

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88 this subsection.

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

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

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

103 (9) Any person who resells water service to his or her
 104 tenants or to individually metered residents for a fee that does
 105 not exceed the actual purchase price plus:

- 106 (a) Up to 9 percent of the actual purchase price; or
 107 (b) The actual cost of meter reading and billing.

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

110 367.081 Rates; procedure for fixing and changing.—

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

114 1. In each ~~every~~ such proceeding, the commission shall
 115 consider the value and quality of the service and the cost of
 116 providing the service, which must ~~shall~~ include, but need not be

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

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

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

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

145 c. Such property is needed to serve customers more than 5

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146 full years after the end of the test year used in the
147 commission's final order on a rate request as provided in
148 subsection (6) only to the extent that the utility presents
149 clear and convincing evidence to justify such consideration.

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

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

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

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

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

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

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175 determination, the commission shall consider:

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

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

181 (I) The commission;

182 (II) The Department of Environmental Protection;

183 (III) The county health departments; or

184 (IV) The local government.

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

201
202 Notwithstanding ~~the provisions of~~ this paragraph, the commission
203 shall approve rates for service which allow a utility to recover

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204 from customers the full amount of environmental compliance
205 costs. Such rates may not include charges for allowances for
206 funds prudently invested or similar charges. For purposes of
207 this requirement, the term "environmental compliance costs"
208 includes all reasonable expenses and fair return on any prudent
209 investment incurred by a utility in complying with the
210 requirements or conditions contained in any permitting,
211 enforcement, or similar decisions of the United States
212 Environmental Protection Agency, the Department of Environmental
213 Protection, a water management district, or any other
214 governmental entity with similar regulatory jurisdiction.

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

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

226 (4) (a) On or before March 31 of each year, the commission
227 by order shall establish a price increase or decrease index for
228 major categories of operating costs incurred by utilities
229 subject to its jurisdiction reflecting the percentage of
230 increase or decrease in such costs from the most recent 12-month
231 historical data available. The commission by rule shall
232 establish the procedure to be used in determining such indices

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233 and a procedure by which a utility, without further action by
234 the commission, or the commission on its own motion, may
235 implement an increase or decrease in its rates based upon the
236 application of the indices to the amount of the major categories
237 of operating costs incurred by the utility during the
238 immediately preceding calendar year, except to the extent of any
239 disallowances or adjustments for those expenses of that utility
240 in its most recent rate proceeding before the commission. The
241 rules shall provide that, upon a finding of good cause,
242 including inadequate service, the commission may order a utility
243 to refrain from implementing a rate increase hereunder unless
244 implemented under a bond or corporate undertaking in the same
245 manner as interim rates may be implemented under s. 367.082. A
246 utility may not use this procedure between the official filing
247 date of the rate proceeding and 1 year thereafter, unless the
248 case is completed or terminated at an earlier date. A utility
249 may not use this procedure to increase any operating cost for
250 which an adjustment has been or could be made under paragraph
251 (b), or to increase its rates by application of a price index
252 other than the most recent price index authorized by the
253 commission at the time of filing.

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

260 1. The new rates must reflect, on an amortized or annual
261 basis, as appropriate, the cost or amount of change in the cost

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

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

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

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

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

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

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

281 g. The fees charged for wastewater sludge disposal.

282 h. A loan service fee or loan origination fee associated
283 with a loan related to an eligible project. The commission shall
284 adopt rules governing the determination of eligible projects,
285 which must be limited to those projects associated with new
286 infrastructure or improvements to existing infrastructure needed
287 to achieve or maintain compliance with federal, state, and local
288 governmental primary or secondary drinking water standards or
289 wastewater treatment standards that relate to:

290 (I) The provision of water or wastewater service for

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291 existing customers;

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

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

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

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

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

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

312 1. Consumptive or water use permit fees charged by a water
313 management district.

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

318 3. The commission may establish by rule additional specific
319 expense items that cause an automatic increase or decrease in a

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320 utility's rates as provided in this paragraph. To be eligible
321 for such treatment, an additional expense item must be imposed
322 upon the utility by a local, state, or federal law, rule, order,
323 or notice and must be outside the control of the utility. If the
324 commission exercises its authority to establish such rule, the
325 commission must, at least once every 5 years, review the rule
326 and determine if each expense item should continue to be cause
327 for the automatic increase or decrease of a utility's rates or
328 if any additional items should become cause for the automatic
329 increase or decrease of a utility's rates as provided in this
330 paragraph ~~The approved rates of any utility which receives all~~
331 ~~or any portion of its utility service from a governmental~~
332 ~~authority or from a water or wastewater utility regulated by the~~
333 ~~commission and which redistributes that service to its utility~~
334 ~~customers shall be automatically increased or decreased without~~
335 ~~hearing, upon verified notice to the commission 45 days prior to~~
336 ~~its implementation of the increase or decrease that the rates~~
337 ~~charged by the governmental authority or other utility have~~
338 ~~changed. The approved rates of any utility which is subject to~~
339 ~~an increase or decrease in the rates or fees that it is charged~~
340 ~~for electric power, the amount of ad valorem taxes assessed~~
341 ~~against its used and useful property, the fees charged by the~~
342 ~~Department of Environmental Protection in connection with the~~
343 ~~National Pollutant Discharge Elimination System Program, or the~~
344 ~~regulatory assessment fees imposed upon it by the commission~~
345 ~~shall be increased or decreased by the utility, without action~~
346 ~~by the commission, upon verified notice to the commission 45~~
347 ~~days prior to its implementation of the increase or decrease~~
348 ~~that the rates charged by the supplier of the electric power or~~

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349 ~~the taxes imposed by the governmental authority, or the~~
350 ~~regulatory assessment fees imposed upon it by the commission~~
351 ~~have changed. The new rates authorized shall reflect the amount~~
352 ~~of the change of the ad valorem taxes or rates imposed upon the~~
353 ~~utility by the governmental authority, other utility, or~~
354 ~~supplier of electric power, or the regulatory assessment fees~~
355 ~~imposed upon it by the commission. The approved rates of any~~
356 ~~utility shall be automatically increased, without hearing, upon~~
357 ~~verified notice to the commission 45 days prior to~~
358 ~~implementation of the increase that costs have been incurred for~~
359 ~~water quality or wastewater quality testing required by the~~
360 ~~Department of Environmental Protection. The new rates authorized~~
361 ~~shall reflect, on an amortized basis, the cost of, or the amount~~
362 ~~of change in the cost of, required water quality or wastewater~~
363 ~~quality testing performed by laboratories approved by the~~
364 ~~Department of Environmental Protection for that purpose. The new~~
365 ~~rates, however, shall not reflect the costs of any required~~
366 ~~water quality or wastewater quality testing already included in~~
367 ~~a utility's rates. A utility may not use this procedure to~~
368 ~~increase its rates as a result of water quality or wastewater~~
369 ~~quality testing or an increase in the cost of purchased water~~
370 ~~services, sewer services, or electric power or in assessed ad~~
371 ~~valorem taxes, which increase was initiated more than 12 months~~
372 ~~before the filing by the utility.~~

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

376 (c) Before implementing a change in rates under this
377 subsection, the utility must ~~shall~~ file an affirmation under

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

387 (d) If, within 15 months after the filing of a utility's
388 annual report required by s. 367.121, the commission finds that
389 the utility exceeded the range of its last authorized rate of
390 return on equity after an adjustment in rates as authorized by
391 this subsection was implemented within the year for which the
392 report was filed or was implemented in the preceding year, the
393 commission may order the utility to refund, with interest, the
394 difference to the ratepayers and adjust rates accordingly. This
395 provision does ~~shall not be construed to~~ require a bond or
396 corporate undertaking not otherwise required.

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

404 (f) At least annually, the commission shall ~~may regularly,~~
405 ~~not less often than once each year,~~ establish by order a
406 leverage formula or formulae that reasonably reflect the range

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407 of returns on common equity for an average water or wastewater
408 utility and which, for purposes of this section, are ~~shall be~~
409 used to calculate the last authorized rate of return on equity
410 for a any utility which otherwise would not have an ~~ne~~
411 established rate of return on equity. In any other proceeding in
412 which an authorized rate of return on equity is to be
413 established, a utility, in lieu of presenting evidence on its
414 rate of return on common equity, may move the commission to
415 adopt the range of rates of return on common equity which is
416 ~~that has been~~ established under this paragraph.

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

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

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

433 (3) The provisions of s. 367.081(1), (2) (a), (2) (c), and
434 (3), and (7) ~~shall~~ apply in determining the utility's rates and
435 charges. However, the commission shall not award rate case

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436 expense to cover fees for attorneys or other outside consultants
437 who are engaged for purposes of preparing or filing the case if
438 a utility receives staff assistance in changing rates and
439 charges pursuant to this section, unless the Office of Public
440 Counsel or interested parties have intervened. The commission
441 may award rate case expense for attorney fees or other outside
442 consultant fees if the fees are incurred for the purpose of
443 providing consulting or legal services to the utility after the
444 initial staff report is made available to customers and the
445 utility. If there is a protest or appeal by a party other than
446 the utility, the commission may award rate case expense to the
447 utility for attorney fees or other outside consultant fees for
448 costs incurred after the protest or appeal. The commission shall
449 adopt rules to administer this subsection.

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

452 367.0816 Recovery of rate case expenses.—

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

461 (2) A utility may recover the 4-year amortized rate case
462 expense for only one rate case at any given time. If the
463 commission approves and a utility implements a rate change from
464 a subsequent rate case pursuant to this section, the utility

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465 forfeits any unamortized rate case expense from a prior rate
466 case. The unamortized portion of rate case expense for a prior
467 case must be removed from rates before the implementation of an
468 additional amortized rate case expense for the most recent rate
469 proceeding. This limitation does not apply to the recovery of
470 rate case expense for a limited proceeding filed pursuant to s.
471 367.0822.

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

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

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

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494 pledge any revenues or other adequate security available to them
495 to repay any funds borrowed.

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

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

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

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

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