

By the Committees on Environmental Preservation and Conservation; and Communications, Energy, and Public Utilities; and 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. 159.8105, 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 facilities or sewage facilities; amending s.
9 367.022, F.S.; exempting from regulation by the
10 Florida Public Service Commission a person who resells
11 water service to certain tenants or residents up to a
12 specified cost; amending s. 367.081, F.S.;
13 establishing criteria for determining the quality of
14 water and wastewater services provided by a utility;
15 establishing a procedure to follow if the commission
16 determines that a utility has failed to provide water
17 and wastewater services that meet certain standards;
18 requiring the commission to adopt rules that include
19 fines; providing for recovery of costs prudently
20 incurred by a utility to address certain findings of
21 the commission or the Department of Environmental
22 Protection; authorizing the creation of a utility
23 reserve fund to establish rates for a utility;
24 requiring the commission to adopt rules to govern such
25 fund; providing for the automatic increase or decrease
26 of approved rates under certain circumstances;
27 establishing criteria for adjusted rates; specifying
28 expense items that permit an automatic increase or
29 decrease in utility rates; providing standards to

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30 allow the commission to establish, by rule, additional
31 specified expense items that cause an automatic
32 increase or decrease of utility rates; deleting
33 certain requirements for approved utility rates that
34 are automatically increased or decreased, upon notice
35 to the commission; deleting a prohibition to conform
36 to changes made by the act; authorizing a water
37 utility to establish a surcharge or other mechanism to
38 recover the prudently incurred fixed costs of certain
39 system improvement projects approved by the
40 commission; amending s. 367.0814, F.S.; conforming
41 cross-references to changes made by the act; amending
42 s. 403.8532, F.S.; authorizing the Department of
43 Environmental Protection to make, or to request that
44 the Florida Water Pollution Control Financing
45 Corporation make loans, grants, and deposits to for-
46 profit privately owned or investor-owned water
47 systems, and deleting current restrictions on such
48 activities; providing an effective date.

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

51
52 Section 1. Section 159.8105, Florida Statutes, is created
53 to read:

54 159.8105 Allocation of bonds for water and wastewater
55 infrastructure projects.—The division shall review the
56 allocation of private activity bonds to determine the
57 availability of additional allocation or reallocation of bonds
58 for water facilities and sewage facilities.

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59 Section 2. Present subsections (9) through (12) of section
60 367.022, Florida Statutes, are renumbered as subsections (10)
61 through (13), respectively, and a new subsection (9) is added to
62 that section, to read:

63 367.022 Exemptions.—The following are not subject to
64 regulation by the commission as a utility nor are they subject
65 to the provisions of this chapter, except as expressly provided:

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

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

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

71 Section 3. Present subsections (7) and (8) of section
72 367.081, Florida Statutes, are renumbered as subsections (8) and
73 (9), respectively, subsections (2) and (4) and present
74 subsection (7) of that section are amended, and a new subsection
75 (7) is added to that section, to read:

76 367.081 Rates; procedure for fixing and changing.—

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

80 1. In each ~~every~~ such proceeding, the commission shall
81 consider the value and quality of the service and the cost of
82 providing the service, which must ~~shall~~ include, but need not be
83 limited to, debt interest; the requirements of the utility for
84 working capital; maintenance, depreciation, tax, and operating
85 expenses incurred in the operation of all property used and
86 useful in the public service; and a fair return on the
87 investment of the utility in property used and useful in the

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88 public service. However, the commission shall not allow the
89 inclusion of contributions-in-aid-of-construction in the rate
90 base of a any utility during a rate proceeding or, ~~nor shall the~~
91 ~~commission~~ impute prospective future contributions-in-aid-of-
92 construction against the utility's investment in property used
93 and useful in the public service. ; ~~and~~ Accumulated depreciation
94 on such contributions-in-aid-of-construction shall not be used
95 to reduce the rate base, and ~~nor shall~~ depreciation on such
96 contributed assets shall not be considered a cost of providing
97 utility service.

98 2. For purposes of such proceedings, the commission shall
99 consider utility property, including land acquired or facilities
100 constructed or to be constructed within a reasonable time in the
101 future, up to ~~not to exceed~~ 24 months after the end of the
102 historic base year used to set final rates unless a longer
103 period is approved by the commission, to be used and useful in
104 the public service, if:

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

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

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

116 3. In determining the value and quality of water service

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117 provided by a utility and whether such utility has satisfied its
118 obligation to provide water service to its customers, the
119 commission shall consider the extent to which the utility meets
120 secondary drinking water standards adopted by the Department of
121 Environmental Protection. In making its determination, the
122 commission shall consider:

123 a. Testimony and evidence provided by customers and the
124 utility.

125 b. Complaints that relate to the secondary drinking water
126 standards which customers have filed during the past 5 years
127 with the commission, the Department of Environmental Protection,
128 the county health departments, or the applicable local
129 government.

130 c. The results of past tests required by the Department of
131 Environmental Protection or county health departments which
132 measure the utility's compliance with the applicable secondary
133 drinking water standards.

134 d. The results of other tests, if deemed necessary by the
135 commission.

136 4. In determining the value and quality of wastewater
137 service provided by a utility, the commission shall consider the
138 extent to which the utility provides wastewater service to its
139 customers which complies with the rules or ordinances governing
140 its activities. In making its determination, the commission
141 shall consider:

142 a. Testimony and evidence provided by customers and the
143 utility.

144 b. Complaints regarding violations of governing rules or
145 ordinances which customers have filed during the past 5 years

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146 with any of the following:

147 (I) The commission;

148 (II) The Department of Environmental Protection;

149 (III) The county health departments; or

150 (IV) The local government.

151 5. If the commission determines that a utility provides
152 water service that does not meet the secondary drinking water
153 quality standards of the Department of Environmental Protection,
154 or that a utility provides wastewater service that adversely
155 affects customers due to a violation of the rules or ordinances
156 governing its operation, the utility shall provide the
157 commission with estimates of the costs and benefits of various
158 solutions to the problems. The utility shall meet with its
159 customers to discuss the costs and benefits of the various
160 solutions and report to the commission the conclusions of the
161 meetings. The commission shall adopt rules necessary to assess
162 and enforce the utility's compliance with this subparagraph. The
163 rules shall prescribe penalties, including fines and reduction
164 of return on equity of up to 100 basis points, if a utility
165 fails to adequately address or offer solutions to the water or
166 wastewater problems.

167 6. A utility may recover its prudently incurred costs and
168 expenses to resolve deficiencies found by the commission
169 pursuant to this subsection or found by the Department of
170 Environmental Protection in a proceeding under chapter 403,
171 related to noncompliance with secondary drinking water
172 standards, or concerning wastewater service that adversely
173 affect customers due to a violation of the rules or ordinances
174 governing its operation. Such costs shall be recoverable through

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175 a rate case filed pursuant to this section or through a separate
176 proceeding initiated by petition of the utility. In its filing,
177 the utility shall describe the activities and costs projected or
178 incurred to resolve the deficiencies found by the commission or
179 the Department of Environmental Protection. Such costs may be a
180 result of action agreed upon by the utility and the commission
181 or the Department of Environmental Protection or as a
182 consequence of a consent order.

183
184 Notwithstanding ~~the provisions of~~ this paragraph, the commission
185 shall approve rates for service which allow a utility to recover
186 from customers the full amount of environmental compliance
187 costs. Such rates may not include charges for allowances for
188 funds prudently invested or similar charges. For purposes of
189 this requirement, the term "environmental compliance costs"
190 includes all reasonable expenses and fair return on any prudent
191 investment incurred by a utility in complying with the
192 requirements or conditions contained in any permitting,
193 enforcement, or similar decisions of the United States
194 Environmental Protection Agency, the Department of Environmental
195 Protection, a water management district, or any other
196 governmental entity with similar regulatory jurisdiction.

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

201 (c) In establishing rates for a utility, the commission may
202 authorize the creation of a utility reserve fund. The commission
203 shall adopt rules to govern the fund, including, but not limited

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204 to, rules relating to expenses for which the fund may be used,
205 segregation of reserve account funds, requirements for a capital
206 improvement plan, and requirements for commission authorization
207 before disbursements are made from the reserve fund.

208 (4) (a) On or before March 31 of each year, the commission
209 by order shall establish a price increase or decrease index for
210 major categories of operating costs incurred by utilities
211 subject to its jurisdiction reflecting the percentage of
212 increase or decrease in such costs from the most recent 12-month
213 historical data available. The commission by rule shall
214 establish the procedure to be used in determining such indices
215 and a procedure by which a utility, without further action by
216 the commission, or the commission on its own motion, may
217 implement an increase or decrease in its rates based upon the
218 application of the indices to the amount of the major categories
219 of operating costs incurred by the utility during the
220 immediately preceding calendar year, except to the extent of any
221 disallowances or adjustments for those expenses of that utility
222 in its most recent rate proceeding before the commission. The
223 rules shall provide that, upon a finding of good cause,
224 including inadequate service, the commission may order a utility
225 to refrain from implementing a rate increase hereunder unless
226 implemented under a bond or corporate undertaking in the same
227 manner as interim rates may be implemented under s. 367.082. A
228 utility may not use this procedure between the official filing
229 date of the rate proceeding and 1 year thereafter, unless the
230 case is completed or terminated at an earlier date. A utility
231 may not use this procedure to increase any operating cost for
232 which an adjustment has been or could be made under paragraph

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233 (b), or to increase its rates by application of a price index
234 other than the most recent price index authorized by the
235 commission at the time of filing.

236 (b) Upon verified notice to the commission 45 days before
237 implementation of the increase or decrease, and without a
238 hearing, the approved rates of a utility shall automatically
239 increase or decrease. Such notice shall inform the commission
240 that the utility's costs for a specified expense item have
241 changed.

242 1. The new rates shall reflect, on an amortized or annual
243 basis, as appropriate, the cost or amount of change in the cost
244 of the specified expense item. The new rates may not reflect the
245 costs of a specified expense item already included in the rates
246 of a utility. Specified expense items eligible for automatic
247 increase or decrease of a utility's rates include, but are not
248 limited to:

249 a. The rates charged by a governmental authority or other
250 water or wastewater utility regulated by the commission which
251 provides utility service to the utility.

252 b. The rates or fees that the utility is charged for
253 electric power.

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

256 d. The fees charged by the Department of Environmental
257 Protection in connection with the National Pollutant Discharge
258 Elimination System permit program.

259 e. The regulatory assessment fees imposed upon the utility
260 by the commission.

261 f. Costs incurred for water quality or wastewater quality

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262 testing required by the Department of Environmental Protection.

263 g. The fees charged for wastewater biosolids disposal.

264 h. A loan service fee or loan origination fee associated
265 with a loan related to an eligible project. The commission shall
266 adopt rules governing the determination of eligible projects,
267 which shall be limited to those projects associated with new
268 infrastructure or improvements to existing infrastructure needed
269 to achieve or maintain compliance with federal or state primary
270 or secondary drinking water standards or wastewater treatment
271 standards that relate to:

272 (I) The provision of water or wastewater service for
273 existing customers;

274 (II) The remediation or prevention of a violation of
275 federal or state primary or secondary drinking water standards;

276 (III) The replacement or upgrade of aging water or
277 wastewater infrastructure if needed to achieve or maintain
278 compliance with federal or state primary or secondary drinking
279 water regulations; or

280 (IV) Projects consistent with the most recent long-range
281 plan of the utility on file with the commission. Eligible
282 projects do not include projects primarily intended to serve
283 future growth.

284 i. Costs incurred for a tank inspection required by the
285 Department of Environmental Protection or a local governmental
286 authority.

287 j. Operator and distribution license fees required by the
288 Department of Environmental Protection or a local governmental
289 authority.

290 k. Water or wastewater operating permit or license fees

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291 charged by the Department of Environmental Protection or a local
292 governmental authority.

293 1. Consumptive or water use permit fees charged by a water
294 management district.

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

299 3. The commission may establish by rule additional specific
300 expense items that cause an automatic increase or decrease in a
301 utility's rates as provided in this paragraph. To be eligible
302 for such treatment, an additional expense item shall be imposed
303 upon the utility by a federal, state, or local law, rule, order,
304 or notice and shall be outside the control of the utility. If
305 the commission exercises its authority to establish such rule,
306 the commission shall, at least once every 5 years, review the
307 rule and determine if each expense item should continue to be
308 cause for the automatic increase or decrease of a utility's
309 rates, or if any additional items should become cause for the
310 automatic increase or decrease of a utility's rates as provided
311 in this paragraph ~~The approved rates of any utility which~~
312 ~~receives all or any portion of its utility service from a~~
313 ~~governmental authority or from a water or wastewater utility~~
314 ~~regulated by the commission and which redistributes that service~~
315 ~~to its utility customers shall be automatically increased or~~
316 ~~decreased without hearing, upon verified notice to the~~
317 ~~commission 45 days prior to its implementation of the increase~~
318 ~~or decrease that the rates charged by the governmental authority~~
319 ~~or other utility have changed. The approved rates of any utility~~

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320 ~~which is subject to an increase or decrease in the rates or fees~~
321 ~~that it is charged for electric power, the amount of ad valorem~~
322 ~~taxes assessed against its used and useful property, the fees~~
323 ~~charged by the Department of Environmental Protection in~~
324 ~~connection with the National Pollutant Discharge Elimination~~
325 ~~System Program, or the regulatory assessment fees imposed upon~~
326 ~~it by the commission shall be increased or decreased by the~~
327 ~~utility, without action by the commission, upon verified notice~~
328 ~~to the commission 45 days prior to its implementation of the~~
329 ~~increase or decrease that the rates charged by the supplier of~~
330 ~~the electric power or the taxes imposed by the governmental~~
331 ~~authority, or the regulatory assessment fees imposed upon it by~~
332 ~~the commission have changed. The new rates authorized shall~~
333 ~~reflect the amount of the change of the ad valorem taxes or~~
334 ~~rates imposed upon the utility by the governmental authority,~~
335 ~~other utility, or supplier of electric power, or the regulatory~~
336 ~~assessment fees imposed upon it by the commission. The approved~~
337 ~~rates of any utility shall be automatically increased, without~~
338 ~~hearing, upon verified notice to the commission 45 days prior to~~
339 ~~implementation of the increase that costs have been incurred for~~
340 ~~water quality or wastewater quality testing required by the~~
341 ~~Department of Environmental Protection. The new rates authorized~~
342 ~~shall reflect, on an amortized basis, the cost of, or the amount~~
343 ~~of change in the cost of, required water quality or wastewater~~
344 ~~quality testing performed by laboratories approved by the~~
345 ~~Department of Environmental Protection for that purpose. The new~~
346 ~~rates, however, shall not reflect the costs of any required~~
347 ~~water quality or wastewater quality testing already included in~~
348 ~~a utility's rates. A utility may not use this procedure to~~

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349 ~~increase its rates as a result of water quality or wastewater~~
350 ~~quality testing or an increase in the cost of purchased water~~
351 ~~services, sewer services, or electric power or in assessed ad~~
352 ~~valorem taxes, which increase was initiated more than 12 months~~
353 ~~before the filing by the utility.~~

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

357 (c) Before implementing a change in rates under this
358 subsection, the utility must ~~shall~~ file an affirmation under
359 oath as to the accuracy of the figures and calculations upon
360 which the change in rates is based, stating that the change will
361 not cause the utility to exceed the range of its last authorized
362 rate of return on equity. A person who ~~Whoever~~ makes a false
363 statement in the affirmation required under this subsection
364 ~~hereunder~~, which statement he or she does not believe to be true
365 in regard to any material matter, commits ~~is guilty of~~ a felony
366 of the third degree, punishable as provided in s. 775.082, s.
367 775.083, or s. 775.084.

368 (d) If, within 15 months after the filing of a utility's
369 annual report required by s. 367.121, the commission finds that
370 the utility exceeded the range of its last authorized rate of
371 return on equity after an adjustment in rates as authorized by
372 this subsection was implemented within the year for which the
373 report was filed or was implemented in the preceding year, the
374 commission may order the utility to refund, with interest, the
375 difference to the ratepayers and adjust rates accordingly. This
376 provision does ~~shall~~ not ~~be construed to~~ require a bond or
377 corporate undertaking not otherwise required.

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

385 (f) At least annually, the commission shall ~~may regularly,~~
386 ~~not less often than once each year,~~ establish by order a
387 leverage formula or formulae that reasonably reflect the range
388 of returns on common equity for an average water or wastewater
389 utility and that ~~which,~~ for purposes of this section, are ~~shall~~
390 ~~be~~ used to calculate the last authorized rate of return on
391 equity for a ~~any~~ utility which otherwise would not have an ~~no~~
392 established rate of return on equity. In any other proceeding in
393 which an authorized rate of return on equity is to be
394 established, a utility, in lieu of presenting evidence on its
395 rate of return on common equity, may move the commission to
396 adopt the range of rates of return on common equity which is
397 ~~that has been~~ established under this paragraph.

398 (7) A water utility may file tariffs establishing a
399 surcharge, or other method for the automatic adjustment of its
400 rates, which shall provide for recovery of the prudently
401 incurred fixed costs consisting of depreciation and pretax
402 returns of certain system improvement projects, as approved by
403 the commission, which are completed and placed in service
404 between base rate proceedings. Such projects shall be for the
405 specific purpose of achieving compliance with secondary drinking
406 water quality standards. With respect to each tariff filed, the

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407 commission shall prescribe the specific procedures to be
408 followed in establishing the sliding scale or other automatic
409 adjustment method.

410 (8)~~(7)~~ The commission shall determine the reasonableness of
411 rate case expenses and shall disallow all rate case expenses
412 determined to be unreasonable. A ~~No~~ rate case expense determined
413 to be unreasonable may not ~~shall~~ be paid by a consumer. In
414 determining the reasonable level of rate case expense, the
415 commission shall consider the extent to which a utility has used
416 ~~utilized~~ or failed to use ~~utilize~~ the provisions of paragraph
417 (4) (a) or paragraph (4) (b) and such other criteria as it may
418 establish by rule.

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

421 367.0814 Staff assistance in changing rates and charges;
422 interim rates.—

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

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

428 403.8532 Drinking water state revolving loan fund; use;
429 rules.—

430 (3) The department may make, or request that the
431 corporation make, loans, grants, and deposits to community water
432 systems, for-profit privately owned or investor-owned water
433 systems, nonprofit transient noncommunity water systems, and
434 nonprofit nontransient noncommunity water systems to assist them
435 in planning, designing, and constructing public water systems~~7~~

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436 ~~unless such public water systems are for-profit privately owned~~
437 ~~or investor-owned systems that regularly serve 1,500 service~~
438 ~~connections or more within a single certified or franchised~~
439 ~~area. However, a for-profit privately owned or investor-owned~~
440 ~~public water system that regularly serves 1,500 service~~
441 ~~connections or more within a single certified or franchised area~~
442 ~~may qualify for a loan only if the proposed project will result~~
443 ~~in the consolidation of two or more public water systems. The~~
444 department may provide loan guarantees, purchase loan insurance,
445 and refinance local debt through the issue of new loans for
446 projects approved by the department. Public water systems may
447 borrow funds made available pursuant to this section and may
448 pledge any revenues or other adequate security available to them
449 to repay any funds borrowed.

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

453 1. At least 15 percent for qualifying small public water
454 systems.

455 2. Up to 15 percent for qualifying financially
456 disadvantaged communities.

457 (b) If an insufficient number of the projects for which
458 funds are reserved under this subsection have been submitted to
459 the department at the time the funding priority list authorized
460 under this section is adopted, the reservation of these funds no
461 longer applies. The department may award the unreserved funds as
462 otherwise provided in this section.

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