

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 or 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 authorizing the creation of a utility reserve fund;
16 requiring the commission to adopt rules to govern the
17 implementation and management of the fund;
18 establishing criteria for adjusted rates; specifying
19 expense items that may be automatically increased or
20 decreased; authorizing the commission to establish, by
21 rule, additional specified expense items that cause an
22 automatic increase or decrease of utility rates;
23 requiring, rather than authorizing, the commission to
24 establish a leverage formula under certain
25 circumstances; restricting a utility from recovering
26 more than a certain percentage of reasonable rate case

27 expenses; amending s. 367.0814, F.S.; prohibiting the
 28 commission from awarding rate case expense to recover
 29 attorney fees or fees of other outside consultants in
 30 certain circumstances; requiring the commission to
 31 adopt rules; amending s. 367.0816, F.S.; prohibiting a
 32 utility from recovering rate case expenses for more
 33 than one rate case at a time; amending s. 367.111,
 34 F.S.; authorizing the commission to review water
 35 quality and wastewater service under certain
 36 circumstances; amending s. 403.8532, F.S.; authorizing
 37 the Department of Environmental Protection to require
 38 or request that the Florida Water Pollution Control
 39 Financing Corporation make loans, grants, and deposits
 40 to for-profit, privately owned, or investor-owned
 41 water systems; deleting current restrictions on such
 42 activities; amending ss. 367.084 and 367.171, F.S.;
 43 conforming cross-references; reenacting s.
 44 403.1837(1), (3), (4), (5), (7), and (11), F.S.,
 45 relating to the Florida Water Pollution Control
 46 Financing Corporation, to incorporate the amendments
 47 made by this act to s. 403.8532, F.S., in references
 48 thereto; providing an effective date.

49
 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 and reallocation of bonds
58 for water and wastewater infrastructure projects.

59 Section 2. Paragraph (nnn) is added to subsection (7) of
60 section 212.08, Florida Statutes, to read:

61 212.08 Sales, rental, use, consumption, distribution, and
62 storage tax; specified exemptions.—The sale at retail, the
63 rental, the use, the consumption, the distribution, and the
64 storage to be used or consumed in this state of the following
65 are hereby specifically exempt from the tax imposed by this
66 chapter.

67 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
68 entity by this chapter do not inure to any transaction that is
69 otherwise taxable under this chapter when payment is made by a
70 representative or employee of the entity by any means,
71 including, but not limited to, cash, check, or credit card, even
72 when that representative or employee is subsequently reimbursed
73 by the entity. In addition, exemptions provided to any entity by
74 this subsection do not inure to any transaction that is
75 otherwise taxable under this chapter unless the entity has
76 obtained a sales tax exemption certificate from the department
77 or the entity obtains or provides other documentation as
78 required by the department. Eligible purchases or leases made

79 with such a certificate must be in strict compliance with this
 80 subsection and departmental rules, and any person who makes an
 81 exempt purchase with a certificate that is not in strict
 82 compliance with this subsection and the rules is liable for and
 83 shall pay the tax. The department may adopt rules to administer
 84 this subsection.

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

92 Section 3. Subsections (9) through (12) of section
 93 367.022, Florida Statutes, are renumbered as subsections (10)
 94 through (13), respectively, and a new subsection (9) is added to
 95 that section, to read:

96 367.022 Exemptions.—The following are not subject to
 97 regulation by the commission as a utility nor are they subject
 98 to the provisions of this chapter, except as expressly provided:

99 (9) A person who resells water service to his or her
 100 tenants or to individually metered residents for a fee that does
 101 not exceed the actual purchase price plus the actual cost of
 102 meter reading and billing, not to exceed 9 percent of the actual
 103 cost of service.

104 Section 4. Paragraph (c) is added to subsection (2) of

105 section 367.081, Florida Statutes, and paragraph (b) of
 106 subsection (4) and subsection (7) of that section are amended,
 107 to read:

108 367.081 Rates; procedure for fixing and changing.—

109 (2)

110 (c) In establishing rates for a utility, the commission
 111 may create a utility reserve fund for infrastructure repairs and
 112 replacement of a utility, to be funded by a portion of the rates
 113 charged by the utility, by a secured escrow account, or through
 114 a letter of credit. The commission shall adopt rules to govern
 115 the funding, implementation, management, and use of the fund,
 116 including, but not limited to, rules related to expenses for
 117 which the fund may be used, segregation of reserve account
 118 funds, requirements for a capital improvement plan, and
 119 requirements for commission authorization before disbursements
 120 are made from the fund.

121 (4)

122 (b) The approved rates of a any utility ~~which receives all~~
 123 ~~or any portion of its utility service from a governmental~~
 124 ~~authority or from a water or wastewater utility regulated by the~~
 125 ~~commission and which redistributes that service to its utility~~
 126 ~~customers~~ shall be automatically increased or decreased without
 127 hearing, upon verified notice to the commission 45 days before
 128 ~~prior to~~ its implementation of the increase or decrease. Such
 129 notice must inform the commission of the costs for each
 130 specified expense item which ~~that the rates charged by the~~

HB 1173

2015

131 ~~governmental authority or other utility~~ have changed. The
132 ~~approved rates of any utility which is subject to an increase or~~
133 ~~decrease in the rates or fees that it is charged for electric~~
134 ~~power, the amount of ad valorem taxes assessed against its used~~
135 ~~and useful property, the fees charged by the Department of~~
136 ~~Environmental Protection in connection with the National~~
137 ~~Pollutant Discharge Elimination System Program, or the~~
138 ~~regulatory assessment fees imposed upon it by the commission~~
139 ~~shall be increased or decreased by the utility, without action~~
140 ~~by the commission, upon verified notice to the commission 45~~
141 ~~days prior to its implementation of the increase or decrease~~
142 ~~that the rates charged by the supplier of the electric power or~~
143 ~~the taxes imposed by the governmental authority, or the~~
144 ~~regulatory assessment fees imposed upon it by the commission~~
145 ~~have changed. The new rates authorized shall reflect the amount~~
146 ~~of the change of the ad valorem taxes or rates imposed upon the~~
147 ~~utility by the governmental authority, other utility, or~~
148 ~~supplier of electric power, or the regulatory assessment fees~~
149 ~~imposed upon it by the commission. The approved rates of any~~
150 ~~utility shall be automatically increased, without hearing, upon~~
151 ~~verified notice to the commission 45 days prior to~~
152 ~~implementation of the increase that costs have been incurred for~~
153 ~~water quality or wastewater quality testing required by the~~
154 ~~Department of Environmental Protection.~~

155 1. The new rates authorized shall reflect, on an amortized
156 or annual basis, as appropriate, the cost of, or the amount of

157 change in the cost of the specified expense item, ~~required water~~
158 ~~quality or wastewater quality testing performed by laboratories~~
159 ~~approved by the Department of Environmental Protection for that~~
160 ~~purpose~~. The new rates, however, may ~~shall~~ not reflect the costs
161 of a specified expense item ~~any required water quality or~~
162 ~~wastewater quality testing~~ already included in a utility's
163 rates. Eligible expense items include:

164 a. The approved rates of a utility that receives all or
165 any portion of its utility service from a governmental authority
166 or from a water or wastewater utility regulated by the
167 commission and redistributes that service to its own customers.

168 b. The rates or fees that the utility is charged for
169 electric power.

170 c. The amount of ad valorem taxes assessed against used
171 and useful property.

172 d. The fees charged by the Department of Environmental
173 Protection in connection with the National Pollutant Discharge
174 Elimination System Program.

175 e. The regulatory assessment fees imposed by the
176 commission.

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

179 g. The fees charged for wastewater biosolids disposal.

180 h. A loan service fee or loan origination fee associated
181 with a loan related to an eligible project. The commission shall
182 adopt rules governing the determination of eligible projects,

183 which shall be limited to projects associated with new
184 infrastructure or improvements to existing infrastructure
185 necessary to achieve or maintain compliance with federal, state,
186 and local governmental primary or secondary water standards or
187 wastewater treatment standards that relate to:

188 (I) The provision of water or wastewater service for
189 existing customers;

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

192 (III) The replacement or upgrade of aging water or
193 wastewater infrastructure, if necessary to achieve or maintain
194 compliance with federal or state primary or secondary drinking
195 water standards; or

196 (IV) Projects consistent with the most recent long-range
197 plan of the utility on file with the commission. Eligible
198 projects do not include projects primarily intended to serve
199 future growth.

200 i. Costs incurred for a tank inspection required by the
201 Department of Environmental Protection or a local governmental
202 authority.

203 j. Operator and distribution license fees required by the
204 Department of Environmental Protection or a local governmental
205 authority.

206 k. Water or wastewater operating permit fees charged by
207 the Department of Environmental Protection or a local
208 governmental authority.

209 1. Consumptive or water use permit fees charged by a water
 210 management district.

211 2. A utility may not use this procedure to increase its
 212 rates as a result of an increase in a specific expense item
 213 which occurred ~~water quality or wastewater quality testing or an~~
 214 ~~increase in the cost of purchased water services, sewer~~
 215 ~~services, or electric power or in assessed ad valorem taxes,~~
 216 ~~which increase was initiated~~ more than 12 months before the
 217 filing by the utility.

218 3. The commission may establish by rule additional
 219 specific expense items that are outside the control of the
 220 utility and have been imposed upon the utility by a federal,
 221 state, or local law, rule, order, or notice. If the commission
 222 establishes such rule, the commission shall, at least once every
 223 5 years, review the rule and determine if each expense item
 224 should continue to be cause for an automatic increase or
 225 decrease and whether additional items should be included.

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

229 (7) The commission shall determine the reasonableness of
 230 rate case expenses and shall disallow all rate case expenses
 231 determined to be unreasonable. A ~~No~~ rate case expense determined
 232 to be unreasonable may not ~~shall~~ be paid by a consumer. In
 233 determining the reasonable level of rate case expense, the
 234 commission shall consider the extent to which a utility has

235 utilized or failed to utilize ~~the provisions of~~ paragraph (4) (a)
236 or paragraph (4) (b) and such other criteria as it may establish
237 by rule. A utility may recover only up to 50 percent of rate
238 case expenses that are determined to be reasonable.

239

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

242 367.0814 Staff assistance in changing rates and charges;
243 interim rates.—

244 (3) The provisions of s. 367.081(1), (2) (a), (2) (c), and
245 (3), and (7) shall apply in determining the utility's rates and
246 charges. However, the commission may not award rate case
247 expenses to recover attorney fees or fees of other outside
248 consultants who are engaged for purposes of preparing or filing
249 the case if a utility receives staff assistance in changing
250 rates and charges pursuant to this section, unless the Office of
251 the Public Counsel or interested parties have intervened. The
252 commission may award rate case expenses for attorney fees or
253 other outside consultant fees if the fees are incurred for the
254 purpose of providing consulting or legal services to the utility
255 after the initial staff report is made available to customers
256 and the utility. If there is a protest or appeal by a party
257 other than the utility, the commission may award rate case
258 expense to the utility for attorney fees or other outside
259 consultant fees for costs incurred after the protest or appeal.
260 By December 31, 2015, the commission must adopt rules to

261 administer this subsection.

262 Section 6. Section 367.0816, Florida Statutes, is amended
 263 to read:

264 367.0816 Recovery of rate case expenses.—

265 (1) The amount of rate case expense determined by the
 266 commission pursuant to the provisions of this chapter to be
 267 recovered through a public utilities rate shall be apportioned
 268 for recovery over a period of 4 years. At the conclusion of the
 269 recovery period, the rate of the public utility shall be reduced
 270 immediately by the amount of rate case expense previously
 271 included in rates.

272 (2) A utility may not recover the 4-year amortized rate
 273 case expense for more than one rate case at any given time. If
 274 the commission approves and a utility implements a rate change
 275 from a subsequent rate case pursuant to this section, the
 276 utility forfeits any unamortized rate case expense from a prior
 277 rate case. The unamortized portion of rate case expense for a
 278 prior case must be removed from rates before the implementation
 279 of an additional amortized rate case expense for the most recent
 280 rate proceeding.

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

283 367.111 Service.—

284 (3) The commission may, on its own motion or based on
 285 complaints of customers of a water utility subject to its
 286 jurisdiction, review water quality as it pertains to secondary

287 drinking water standards established by the Department of
288 Environmental Protection. The commission may, on its own motion
289 or based on complaints of customers of a wastewater utility
290 subject to its jurisdiction, review wastewater service as it
291 pertains to odor, noise, aerosol drift, or lighting.

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

294 403.8532 Drinking water state revolving loan fund; use;
295 rules.—

296 (3) The department may make, or request that the
297 corporation make, loans, grants, and deposits to community water
298 systems, for-profit privately owned or investor-owned water
299 systems, nonprofit transient noncommunity water systems, and
300 nonprofit nontransient noncommunity water systems to assist them
301 in planning, designing, and constructing public water systems,
302 ~~unless such public water systems are for-profit privately owned~~
303 ~~or investor-owned systems that regularly serve 1,500 service~~
304 ~~connections or more within a single certified or franchised~~
305 ~~area. However, a for-profit privately owned or investor-owned~~
306 ~~public water system that regularly serves 1,500 service~~
307 ~~connections or more within a single certified or franchised area~~
308 ~~may qualify for a loan only if the proposed project will result~~
309 ~~in the consolidation of two or more public water systems. The~~
310 department may provide loan guarantees, purchase loan insurance,
311 and refinance local debt through the issue of new loans for
312 projects approved by the department. Public water systems may

313 borrow funds made available pursuant to this section and may
 314 pledge any revenues or other adequate security available to them
 315 to repay any funds borrowed.

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

319 1. At least 15 percent for qualifying small public water
 320 systems.

321 2. Up to 15 percent for qualifying financially
 322 disadvantaged communities.

323 (b) If an insufficient number of the projects for which
 324 funds are reserved under this subsection have been submitted to
 325 the department at the time the funding priority list authorized
 326 under this section is adopted, the reservation of these funds no
 327 longer applies. The department may award the unreserved funds as
 328 otherwise provided in this section.

329 Section 9. Section 367.084, Florida Statutes, is amended
 330 to read:

331 367.084 Rate adjustment orders.—~~An~~ Any order issued by the
 332 commission adjusting general increases or reductions of the
 333 rates and charges of a ~~any~~ utility or regulated company must be
 334 reduced to writing, including any dissenting or concurring
 335 opinions, within 20 days after the official vote of the
 336 commission. Within such 20-day period, the commission shall also
 337 mail a copy to the clerk of the circuit court of each county in
 338 which customers of the utility or regulated company are served

339 who are affected by the rate adjustment, which copy must be kept
 340 on file and made available to the public. The commission shall
 341 notify all parties of record in the proceeding of the date of
 342 such mailing. Such an order is not considered rendered for
 343 purposes of appeal, rehearing, or judicial review until the date
 344 the copies are mailed as required by this section. This
 345 provision does not delay the effective date of the order. Such
 346 an order is considered rendered on the date of the official vote
 347 for the purposes of s. 367.081(7) ~~s. 367.081(6)~~.

348 Section 10. Subsection (8) of section 367.171, Florida
 349 Statutes, is amended to read:

350 367.171 Effectiveness of this chapter.—

351 (8) Each county that ~~which~~ is not subject to ~~excluded from~~
 352 ~~the provisions of~~ this chapter shall regulate the rates of all
 353 utilities in that county which would otherwise be subject to
 354 regulation by the commission pursuant to s. 367.081(1), (2),
 355 (3), and (7) ~~(6)~~. The county may ~~shall~~ not regulate the rates or
 356 charges of any system or facility that ~~which~~ would otherwise be
 357 exempt from commission regulation pursuant to s. 367.022(2). For
 358 this purpose the county or its agency shall proceed as though
 359 the county or agency is the commission.

360 Section 11. For the purpose of incorporating the
 361 amendments made by this act to s. 403.8532, Florida Statutes, in
 362 references thereto, subsections (1), (3), (4), (5), (7), and
 363 (11) of s. 403.1837, Florida Statutes, are reenacted to read:

364 403.1837 Florida Water Pollution Control Financing

365 Corporation.—

366 (1) The Florida Water Pollution Control Financing
367 Corporation is created as a nonprofit public-benefit corporation
368 for the purpose of financing or refinancing the costs of
369 projects and activities described in ss. 403.1835 and 403.8532.
370 The projects and activities described in those sections
371 constitute a public governmental purpose; are necessary for the
372 health, safety, and welfare of all residents; and include
373 legislatively approved fixed capital outlay projects. Fulfilling
374 the purposes of the corporation promotes the health, safety, and
375 welfare of the people of the state and serves essential
376 governmental functions and a paramount public purpose. The
377 activities of the corporation are specifically limited to
378 assisting the department in implementing financing activities to
379 provide funding for the programs authorized in ss. 403.1835 and
380 403.8532. All other activities relating to the purposes for
381 which the corporation raises funds are the responsibility of the
382 department, including, but not limited to, development of
383 program criteria, review of applications for financial
384 assistance, decisions relating to the number and amount of loans
385 or other financial assistance to be provided, and enforcement of
386 the terms of any financial assistance agreements provided
387 through funds raised by the corporation. The corporation shall
388 terminate upon fulfilling the purposes of this section.

389 (3) The corporation shall have all the powers of a
390 corporate body under the laws of the state, consistent with this

391 section, including, but not limited to, the power to:
 392 (a) Adopt, amend, and repeal bylaws consistent with this
 393 section.
 394 (b) Sue and be sued.
 395 (c) Adopt and use a common seal.
 396 (d) Acquire, purchase, hold, lease, and convey any real
 397 and personal property as may be proper or expedient to carry out
 398 the purposes of the corporation and this section, and to sell,
 399 lease, or otherwise dispose of that property.
 400 (e) Elect or appoint and employ such officers, agents, and
 401 employees as the corporation considers advisable to operate and
 402 manage the affairs of the corporation, who may be officers or
 403 employees of the department and the state agencies represented
 404 on the board of directors of the corporation.
 405 (f) Borrow money and issue notes, bonds, certificates of
 406 indebtedness, or other obligations or evidences of indebtedness
 407 described in s. 403.1835 or s. 403.8532.
 408 (g) Operate, as specifically directed by the department,
 409 any program to provide financial assistance authorized under s.
 410 403.1835(3) or s. 403.8532(3), which may be funded from any
 411 funds received under a service contract with the department,
 412 from the proceeds of bonds issued by the corporation, or from
 413 any other funding sources obtained by the corporation.
 414 (h) Sell all or any portion of the loans issued under s.
 415 403.1835 or s. 403.8532 to accomplish the purposes of those
 416 sections.

417 (i) Make and execute any contracts, trust agreements, and
418 other instruments and agreements necessary or convenient to
419 accomplish the purposes of the corporation and this section.

420 (j) Select, retain, and employ professionals, contractors,
421 or agents, which may include the Division of Bond Finance of the
422 State Board of Administration, as necessary or convenient to
423 enable or assist the corporation in carrying out its purposes
424 and this section.

425 (k) Do any act or thing necessary or convenient to carry
426 out the purposes of the corporation and this section.

427 (4) The corporation shall evaluate all financial and
428 market conditions necessary and prudent for the purpose of
429 making sound, financially responsible, and cost-effective
430 decisions in order to secure additional funds to fulfill the
431 purposes of this section and ss. 403.1835 and 403.8532.

432 (5) The corporation may enter into one or more service
433 contracts with the department under which the corporation shall
434 provide services to the department in connection with financing
435 the functions, projects, and activities provided in ss. 403.1835
436 and 403.8532. The department may enter into one or more service
437 contracts with the corporation and provide for payments under
438 those contracts pursuant to s. 403.1835(9) or s. 403.8533,
439 subject to annual appropriation by the Legislature.

440 (a) The service contracts may provide for the transfer of
441 all or a portion of the funds in the Wastewater Treatment and
442 Stormwater Management Revolving Loan Trust Fund and the Drinking

443 Water Revolving Loan Trust Fund to the corporation for use by
444 the corporation for costs incurred by the corporation in its
445 operations, including, but not limited to, payment of debt
446 service, reserves, or other costs in relation to bonds issued by
447 the corporation, for use by the corporation at the request of
448 the department to directly provide the types of local financial
449 assistance provided in ss. 403.1835(3) and 403.8532(3), or for
450 payment of the administrative costs of the corporation.

451 (b) The department may not transfer funds under any
452 service contract with the corporation without a specific
453 appropriation for such purpose in the General Appropriations
454 Act, except for administrative expenses incurred by the State
455 Board of Administration or other expenses necessary under
456 documents authorizing or securing previously issued bonds of the
457 corporation. The service contracts may also provide for the
458 assignment or transfer to the corporation of any loans made by
459 the department.

460 (c) The service contracts may establish the operating
461 relationship between the department and the corporation and must
462 require the department to request the corporation to issue bonds
463 before any issuance of bonds by the corporation, to take any
464 actions necessary to enforce the agreements entered into between
465 the corporation and other parties, and to take all other actions
466 necessary to assist the corporation in its operations.

467 (d) In compliance with s. 287.0641 and other applicable
468 provisions of law, the obligations of the department under the

469 service contracts do not constitute a general obligation of the
470 state or a pledge of the faith and credit or taxing power of the
471 state, nor may the obligations be construed as an obligation of
472 the State Board of Administration or entities for which it
473 invests funds, or of the department except as provided in this
474 section as payable solely from amounts available under any
475 service contract between the corporation and the department,
476 subject to appropriation.

477 (e) In compliance with this subsection and s. 287.0582,
478 service contracts must expressly include the following
479 statement: "The State of Florida's performance and obligation to
480 pay under this contract is contingent upon an annual
481 appropriation by the Legislature."

482 (7) The corporation is exempt from taxation and
483 assessments of any nature whatsoever upon its income and any
484 property, assets, or revenues acquired, received, or used in the
485 furtherance of the purposes provided in ss. 403.1835, 403.1838,
486 and 403.8532. The obligations of the corporation incurred under
487 subsection (6) and the interest and income on the obligations
488 and all security agreements, letters of credit, liquidity
489 facilities, or other obligations or instruments arising out of,
490 entered into in connection with, or given to secure payment of
491 the obligations are exempt from all taxation; however, the
492 exemption does not apply to any tax imposed by chapter 220 on
493 the interest, income, or profits on debt obligations owned by
494 corporations.

HB 1173

2015

495 (11) The benefits or earnings of the corporation may not
496 inure to the benefit of any private person, except persons
497 receiving grants and loans under s. 403.1835 or s. 403.8532.
498 Section 12. This act shall take effect July 1, 2015.