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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2015	.	
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The Committee on Environmental Preservation and Conservation
(Hays) 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 and reallocation of bonds



691164

11 for water and wastewater infrastructure projects.

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

14 212.08 Sales, rental, use, consumption, distribution, and
15 storage tax; specified exemptions.—The sale at retail, the
16 rental, the use, the consumption, the distribution, and the
17 storage to be used or consumed in this state of the following
18 are hereby specifically exempt from the tax imposed by this
19 chapter.

20 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
21 entity by this chapter do not inure to any transaction that is
22 otherwise taxable under this chapter when payment is made by a
23 representative or employee of the entity by any means,
24 including, but not limited to, cash, check, or credit card, even
25 when that representative or employee is subsequently reimbursed
26 by the entity. In addition, exemptions provided to any entity by
27 this subsection do not inure to any transaction that is
28 otherwise taxable under this chapter unless the entity has
29 obtained a sales tax exemption certificate from the department
30 or the entity obtains or provides other documentation as
31 required by the department. Eligible purchases or leases made
32 with such a certificate must be in strict compliance with this
33 subsection and departmental rules, and any person who makes an
34 exempt purchase with a certificate that is not in strict
35 compliance with this subsection and the rules is liable for and
36 shall pay the tax. The department may adopt rules to administer
37 this subsection.

38 (nnn) *Investor-owned water and wastewater utilities.*—Sales
39 or leases to an investor-owned water or wastewater utility owned



691164

40 or operated by a Florida corporation are exempt from the tax
41 imposed by this chapter if the sole or primary function of the
42 corporation is to construct, maintain, or operate a water or
43 wastewater system in this state and if the goods or services
44 purchased or leased are used in this state.

45 Section 3. Present subsections (9) through (12) of section
46 367.022, Florida Statutes, are redesignated as subsections (10)
47 through (13), respectively, and a new subsection (9) is added to
48 that section, to read:

49 367.022 Exemptions.—The following are not subject to
50 regulation by the commission as a utility nor are they subject
51 to the provisions of this chapter, except as expressly provided:

52 (9) Any person who resells water service to his or her
53 tenants or to individually metered residents for a fee that does
54 not exceed the actual purchase price plus the actual cost of
55 meter reading and billing, not to exceed 9 percent of the actual
56 cost of service.

57 Section 4. Paragraph (c) is added to subsection (2) of
58 section 367.081, Florida Statutes, and paragraph (b) of
59 subsection (4) and subsection (7) of that section are amended,
60 to read:

61 367.081 Rates; procedure for fixing and changing.—

62 (2)

63 (c) In establishing rates for a utility, the commission may
64 create a utility reserve fund for infrastructure repair and
65 replacement for a utility for existing distribution and
66 collection infrastructure that is nearing the end of its useful
67 life or is negatively impacting water quality or reliability of
68 service, to be funded by a portion of the rates charged by the



691164

69 utility, by a secured escrow account, or through a letter of
70 credit. The commission shall adopt rules to govern the
71 implementation, management, and utilization of the fund,
72 including, but not limited to, rules related to expenses for
73 which the fund may be used, segregation of reserve account
74 funds, requirements for a capital improvement plan, and
75 requirements for commission authorization before disbursements
76 are made from the fund.

77 (4)

78 (b) ~~The approved rates of any utility which receives all or~~
79 ~~any portion of its utility service from a governmental authority~~
80 ~~or from a water or wastewater utility regulated by the~~
81 ~~commission and which redistributes that service to its utility~~
82 ~~customers shall be automatically increased or decreased without~~
83 ~~hearing, upon verified notice to the commission 45 days prior to~~
84 ~~its implementation of the increase or decrease that its costs~~
85 ~~for any specified expense item the rates charged by the~~
86 ~~governmental authority or other utility have changed. The~~
87 ~~approved rates of any utility which is subject to an increase or~~
88 ~~decrease in the rates or fees that it is charged for electric~~
89 ~~power, the amount of ad valorem taxes assessed against its used~~
90 ~~and useful property, the fees charged by the Department of~~
91 ~~Environmental Protection in connection with the National~~
92 ~~Pollutant Discharge Elimination System Program, or the~~
93 ~~regulatory assessment fees imposed upon it by the commission~~
94 ~~shall be increased or decreased by the utility, without action~~
95 ~~by the commission, upon verified notice to the commission 45~~
96 ~~days prior to its implementation of the increase or decrease~~
97 ~~that the rates charged by the supplier of the electric power or~~



691164

98 ~~the taxes imposed by the governmental authority, or the~~
99 ~~regulatory assessment fees imposed upon it by the commission~~
100 ~~have changed. The new rates authorized shall reflect the amount~~
101 ~~of the change of the ad valorem taxes or rates imposed upon the~~
102 ~~utility by the governmental authority, other utility, or~~
103 ~~supplier of electric power, or the regulatory assessment fees~~
104 ~~imposed upon it by the commission. The approved rates of any~~
105 ~~utility shall be automatically increased, without hearing, upon~~
106 ~~verified notice to the commission 45 days prior to~~
107 ~~implementation of the increase that costs have been incurred for~~
108 ~~water quality or wastewater quality testing required by the~~
109 ~~Department of Environmental Protection.~~

110 1. The new rates authorized shall reflect, on an amortized
111 or annual basis, as appropriate, the cost of, or the amount of
112 change in the cost of, the specified expense item, required
113 water quality or wastewater quality testing performed by
114 laboratories approved by the Department of Environmental
115 Protection for that purpose. The new rates, however, shall not
116 reflect the costs of any specified expense item any required
117 water quality or wastewater quality testing already included in
118 a utility's rates. Specified expense items that are eligible for
119 automatic increase or decrease of a utility's rates include, but
120 are not limited to:

121 a. The rates charged by a governmental authority or other
122 water or wastewater utility regulated by the commission which
123 provides utility service to the utility.

124 b. The rates or fees that the utility is charged for
125 electric power.

126 c. The amount of ad valorem taxes assessed against the



691164

127 utility's used and useful property.

128 d. The fees charged by the Department of Environmental
129 Protection in connection with the National Pollutant Discharge
130 Elimination System Program.

131 e. The regulatory assessment fees imposed upon the utility
132 by the commission.

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

135 g. The fees charged for wastewater sludge disposal.

136 h. Costs incurred for any tank inspection required by the
137 Department of Environmental Protection or a local governmental
138 authority.

139 i. Operator and distribution license fees required by the
140 Department of Environmental Protection or a local governmental
141 authority.

142 j. Water or wastewater operating permit fees charged by the
143 Department of Environmental Protection or a local governmental
144 authority.

145 k. Consumptive or water use permit fees charged by a water
146 management district.

147 2. A utility may not use this procedure to increase its
148 rates as a result of an increase in a specific expense item
149 which occurred ~~water quality or wastewater quality testing or an~~
150 ~~increase in the cost of purchased water services, sewer~~
151 ~~services, or electric power or in assessed ad valorem taxes,~~
152 ~~which increase was initiated~~ more than 12 months before the
153 filing by the utility.

154 3. The commission may establish by rule additional specific
155 expense items that are outside the control of the utility and



691164

156 have been imposed upon the utility by a federal, state, or local
157 law, rule, order, or notice. If the commission establishes such
158 rule, the commission shall, at least once every 5 years, review
159 the rule and determine if each expense item should continue to
160 be cause for an automatic increase or decrease and whether
161 additional items should be included.

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

165 (7) The commission shall determine the reasonableness of
166 rate case expenses and shall disallow all rate case expenses
167 determined to be unreasonable. No rate case expense determined
168 to be unreasonable shall be paid by a consumer. In determining
169 the reasonable level of rate case expense, the commission shall
170 consider the extent to which a utility has utilized or failed to
171 utilize ~~the provisions of~~ paragraph (4) (a) or paragraph (4) (b)
172 and such other criteria as it may establish by rule. A utility
173 may recover only up to 50 percent of rate case expenses that are
174 determined to be reasonable.

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

177 367.0814 Staff assistance in changing rates and charges;
178 interim rates.—

179 (3) The provisions of s. 367.081(1), (2) (a), and (3) shall
180 apply in determining the utility's rates and charges. However,
181 the commission shall not award rate case expenses to recover
182 attorney fees or fees of other outside consultants who are
183 engaged for purposes of preparing or filing the case if a
184 utility receives staff assistance in changing rates and charges



691164

185 pursuant to this section, unless the Office of Public Counsel or
186 interested parties have intervened. The commission may award
187 rate case expenses for attorney fees or other outside consultant
188 fees if the fees are incurred for the purpose of providing
189 consulting or legal services to the utility after the initial
190 staff report is made available to customers and the utility. If
191 there is a protest or appeal by a party other than the utility,
192 the commission may award rate case expense to the utility for
193 attorney fees or other outside consultant fees for costs
194 incurred after the protest or appeal. By December 31, 2015, the
195 commission must adopt rules to administer this subsection.

196 Section 6. Section 367.0816, Florida Statutes, is amended
197 to read:

198 367.0816 Recovery of rate case expenses.—

199 (1) The amount of rate case expense determined by the
200 commission pursuant to the provisions of this chapter to be
201 recovered through a public utilities rate shall be apportioned
202 for recovery over a period of 4 years. At the conclusion of the
203 recovery period, the rate of the public utility shall be reduced
204 immediately by the amount of rate case expense previously
205 included in rates.

206 (2) A utility may not recover the 4-year amortized rate
207 case expense for more than one rate case at any given time. If
208 the commission approves and a utility implements a rate change
209 from a subsequent rate case pursuant to this section, any
210 unamortized rate case expense for a prior rate case shall be
211 discontinued. The unamortized portion of rate case expense for a
212 prior case must be removed from rates before the implementation
213 of an additional amortized rate case expense for the most recent



691164

214 rate proceeding.

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

217 367.111 Service.—

218 (3) The commission may, on its own motion or based on
219 complaints of customers of a water utility subject to its
220 jurisdiction, review water quality as it pertains to secondary
221 drinking water standards established by the Department of
222 Environmental Protection. The commission may, on its own motion
223 or based on complaints of customers of a wastewater utility
224 subject to its jurisdiction, review wastewater service as it
225 pertains to odor, noise, aerosol drift, or lighting.

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

228 403.8532 Drinking water state revolving loan fund; use;
229 rules.—

230 (3) The department may make, or request that the
231 corporation make, loans, grants, and deposits to community water
232 systems; for-profit, privately owned, or investor-owned water
233 systems; ~~nonprofit, transient, noncommunity water systems;~~ and
234 nonprofit, nontransient, noncommunity water systems to assist
235 them in planning, designing, and constructing public water
236 systems, ~~unless such public water systems are for-profit~~
237 ~~privately owned or investor-owned systems that regularly serve~~
238 ~~1,500 service connections or more within a single certified or~~
239 ~~franchised area. However, a for-profit privately owned or~~
240 ~~investor-owned public water system that regularly serves 1,500~~
241 ~~service connections or more within a single certified or~~
242 ~~franchised area may qualify for a loan only if the proposed~~



691164

243 ~~project will result in the consolidation of two or more public~~
244 ~~water systems.~~ The department may provide loan guarantees,
245 purchase loan insurance, and refinance local debt through the
246 issue of new loans for projects approved by the department.
247 Public water systems may borrow funds made available pursuant to
248 this section and may pledge any revenues or other adequate
249 security available to them to repay any funds borrowed.

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

253 1. At least 15 percent for qualifying small public water
254 systems.

255 2. Up to 15 percent for qualifying financially
256 disadvantaged communities.

257 (b) If an insufficient number of the projects for which
258 funds are reserved under this subsection have been submitted to
259 the department at the time the funding priority list authorized
260 under this section is adopted, the reservation of these funds no
261 longer applies. The department may award the unreserved funds as
262 otherwise provided in this section.

263 Section 9. Section 367.084, Florida Statutes, is amended to
264 read:

265 367.084 Rate adjustment orders.—An ~~Any~~ order issued by the
266 commission adjusting general increases or reductions of the
267 rates and charges of a ~~any~~ utility or regulated company must be
268 reduced to writing, including any dissenting or concurring
269 opinions, within 20 days after the official vote of the
270 commission. Within such 20-day period, the commission shall also
271 mail a copy to the clerk of the circuit court of each county in



691164

272 which customers of the utility or regulated company are served
273 who are affected by the rate adjustment, which copy must be kept
274 on file and made available to the public. The commission shall
275 notify all parties of record in the proceeding of the date of
276 such mailing. Such an order is not considered rendered for
277 purposes of appeal, rehearing, or judicial review until the date
278 the copies are mailed as required by this section. This
279 provision does not delay the effective date of the order. Such
280 an order is considered rendered on the date of the official vote
281 for the purposes of s. 367.081(7) ~~s. 367.081(6)~~.

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

284 367.171 Effectiveness of this chapter.—

285 (8) Each county that which is not subject to ~~excluded from~~
286 ~~the provisions of~~ this chapter shall regulate the rates of all
287 utilities in that county which would otherwise be subject to
288 regulation by the commission pursuant to s. 367.081(1), (2),
289 (3), and (7) and s. 367.165 ~~(6)~~. The county shall not regulate
290 the rates or charges of any system or facility that which would
291 otherwise be exempt from commission regulation pursuant to s.
292 367.022(2). For this purpose the county or its agency shall
293 proceed as though the county or agency is the commission.

294 Section 11. This act shall take effect July 1, 2015.

295
296 ===== T I T L E A M E N D M E N T =====

297 And the title is amended as follows:

298 Delete everything before the enacting clause
299 and insert:

300 A bill to be entitled



691164

301 An act relating to water and wastewater; creating s.
302 159.8105, F.S.; requiring the Division of Bond Finance
303 of the State Board of Administration to review the
304 allocation of private activity bonds to determine the
305 availability of additional allocation or reallocation
306 of bonds for water and wastewater infrastructure
307 projects; amending s. 212.08, F.S.; extending
308 specified tax exemptions to certain investor-owned
309 water and wastewater utilities; amending s. 367.022,
310 F.S.; exempting from regulation by the Florida Public
311 Service Commission a person who resells water service
312 to certain tenants or residents up to a specified
313 percentage or cost; amending s. 367.081, F.S.;
314 authorizing the creation of a utility reserve fund;
315 requiring the commission to adopt rules to govern the
316 implementation and management of the fund;
317 establishing criteria for adjusted rates; specifying
318 expense items that may be automatically increased or
319 decreased; authorizing the commission to establish, by
320 rule, additional specified expense items that cause an
321 automatic increase or decrease of utility rates;
322 requiring, rather than authorizing, the commission to
323 establish a leverage formula under certain
324 circumstances; restricting a utility from recovering
325 more than a certain percentage of reasonable rate case
326 expenses; amending s. 367.0814, F.S.; prohibiting the
327 commission from awarding rate case expense to recover
328 attorney fees or fees of other outside consultants in
329 certain circumstances; requiring the commission to



691164

330 adopt rules; amending s. 367.0816, F.S.; prohibiting a
331 utility from recovering certain expenses for more than
332 one rate case at a time; amending s. 367.111, F.S.;
333 authorizing the commission to review water quality and
334 wastewater service under certain circumstances;
335 amending s. 403.8532, F.S.; authorizing the Department
336 of Environmental Protection to require or request that
337 the Florida Water Pollution Control Financing
338 Corporation make loans, grants, and deposits to for-
339 profit, privately owned, or investor-owned water
340 systems; deleting current restrictions on such
341 activities; amending ss. 367.084 and 367.171, F.S.;
342 conforming cross-references; making technical changes;
343 providing an effective date.