

By Senator Hays

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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

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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 water
41 systems; deleting current restrictions on such
42 activities; amending ss. 367.084 and 367.171, F.S.;
43 conforming cross-references; making technical changes;
44 providing an effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

47
48 Section 1. Section 159.8105, Florida Statutes, is created
49 to read:

50 159.8105 Allocation of bonds for water and wastewater
51 infrastructure projects.—The division shall review the
52 allocation of private activity bonds to determine the
53 availability of additional allocation and reallocation of bonds
54 for water and wastewater infrastructure projects.

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

57 212.08 Sales, rental, use, consumption, distribution, and
58 storage tax; specified exemptions.—The sale at retail, the

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59 rental, the use, the consumption, the distribution, and the
60 storage to be used or consumed in this state of the following
61 are hereby specifically exempt from the tax imposed by this
62 chapter.

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

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

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88 Section 3. Present subsections (9) through (12) of section
89 367.022, Florida Statutes, are redesignated as subsections (10)
90 through (13), respectively, and a new subsection (9) is added to
91 that section, to read:

92 367.022 Exemptions.—The following are not subject to
93 regulation by the commission as a utility nor are they subject
94 to the provisions of this chapter, except as expressly provided:

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

100 Section 4. Paragraph (c) is added to subsection (2) of
101 section 367.081, Florida Statutes, and paragraph (b) of
102 subsection (4) and subsection (7) of that section are amended,
103 to read:

104 367.081 Rates; procedure for fixing and changing.—

105 (2)

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

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117 (4)

118 (b) The approved rates of a any utility ~~which receives all~~
119 ~~or any portion of its utility service from a governmental~~
120 ~~authority or from a water or wastewater utility regulated by the~~
121 ~~commission and which redistributes that service to its utility~~
122 ~~customers~~ shall be automatically increased or decreased without
123 hearing, upon verified notice to the commission 45 days prior to
124 its implementation of the increase or decrease. Such notice must
125 inform the commission which costs for a specified expense item
126 ~~that the rates charged by the governmental authority or other~~
127 ~~utility have changed. The approved rates of any utility which is~~
128 ~~subject to an increase or decrease in the rates or fees that it~~
129 ~~is charged for electric power, the amount of ad valorem taxes~~
130 ~~assessed against its used and useful property, the fees charged~~
131 ~~by the Department of Environmental Protection in connection with~~
132 ~~the National Pollutant Discharge Elimination System Program, or~~
133 ~~the regulatory assessment fees imposed upon it by the commission~~
134 ~~shall be increased or decreased by the utility, without action~~
135 ~~by the commission, upon verified notice to the commission 45~~
136 ~~days prior to its implementation of the increase or decrease~~
137 ~~that the rates charged by the supplier of the electric power or~~
138 ~~the taxes imposed by the governmental authority, or the~~
139 ~~regulatory assessment fees imposed upon it by the commission~~
140 ~~have changed. The new rates authorized shall reflect the amount~~
141 ~~of the change of the ad valorem taxes or rates imposed upon the~~
142 ~~utility by the governmental authority, other utility, or~~
143 ~~supplier of electric power, or the regulatory assessment fees~~
144 ~~imposed upon it by the commission. The approved rates of any~~
145 ~~utility shall be automatically increased, without hearing, upon~~

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146 ~~verified notice to the commission 45 days prior to~~
147 ~~implementation of the increase that costs have been incurred for~~
148 ~~water quality or wastewater quality testing required by the~~
149 ~~Department of Environmental Protection.~~

150 1. The new rates authorized shall reflect, on an amortized
151 or annual basis, as appropriate, the cost of, or the amount of
152 change in the cost of, the specified expense item, ~~required~~
153 ~~water quality or wastewater quality testing performed by~~
154 ~~laboratories approved by the Department of Environmental~~
155 ~~Protection for that purpose.~~ The new rates, however, shall not
156 reflect the costs of a specified expense item ~~any required water~~
157 ~~quality or wastewater quality testing~~ already included in a
158 utility's rates. Specified expense items that are eligible
159 include:

160 a. The approved rates of a utility that receives all or any
161 portion of its utility service from a governmental authority or
162 from a water or wastewater utility regulated by the commission
163 and which redistributes that service to its own customers.

164 b. The rates or fees that the utility is charged for
165 electric power.

166 c. The amount of ad valorem taxes assessed against used and
167 useful property.

168 d. The fees charged by the Department of Environmental
169 Protection in connection with the National Pollutant Discharge
170 Elimination System Program.

171 e. The regulatory assessment fees imposed by the
172 commission.

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

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175 g. The fees charged for wastewater biosolids disposal.

176 h. Costs incurred for a tank inspection required by the
177 Department of Environmental Protection or a local governmental
178 authority.

179 i. Operator and distribution license fees required by the
180 Department of Environmental Protection or a local governmental
181 authority.

182 j. Water or wastewater operating permit fees charged by the
183 Department of Environmental Protection or a local governmental
184 authority.

185 k. Consumptive or water use permit fees charged by a water
186 management district.

187 2. A utility may not use this procedure to increase its
188 rates as a result of an increase in a specific expense item
189 which occurred ~~water quality or wastewater quality testing or an~~
190 ~~increase in the cost of purchased water services, sewer~~
191 ~~services, or electric power or in assessed ad valorem taxes,~~
192 ~~which increase was initiated~~ more than 12 months before the
193 filing by the utility.

194 3. The commission may establish by rule additional specific
195 expense items that are outside the control of the utility and
196 have been imposed upon the utility by a federal, state, or local
197 law, rule, order, or notice. If the commission establishes such
198 rule, the commission shall, at least once every 5 years, review
199 the rule and determine if each expense item should continue to
200 be cause for an automatic increase or decrease and whether
201 additional items should be included.

202 4. ~~The provisions of~~ This subsection does ~~de~~ not prevent a
203 utility from seeking a change in rates pursuant to ~~the~~

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204 ~~provisions of~~ subsection (2).

205 (7) The commission shall determine the reasonableness of
206 rate case expenses and shall disallow all rate case expenses
207 determined to be unreasonable. No rate case expense determined
208 to be unreasonable shall be paid by a consumer. In determining
209 the reasonable level of rate case expense, the commission shall
210 consider the extent to which a utility has utilized or failed to
211 utilize ~~the provisions of~~ paragraph (4) (a) or paragraph (4) (b)
212 and such other criteria as it may establish by rule. A utility
213 may recover only up to 50 percent of rate case expenses that are
214 determined to be reasonable.

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

217 367.0814 Staff assistance in changing rates and charges;
218 interim rates.—

219 (3) The provisions of s. 367.081(1), (2) (a), and (3) shall
220 apply in determining the utility's rates and charges. However,
221 the commission shall not award rate case expenses to recover
222 attorney fees or fees of other outside consultants who are
223 engaged for purposes of preparing or filing the case if a
224 utility receives staff assistance in changing rates and charges
225 pursuant to this section, unless the Office of Public Counsel or
226 interested parties have intervened. The commission may award
227 rate case expenses for attorney fees or other outside consultant
228 fees if the fees are incurred for the purpose of providing
229 consulting or legal services to the utility after the initial
230 staff report is made available to customers and the utility. If
231 there is a protest or appeal by a party other than the utility,
232 the commission may award rate case expense to the utility for

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233 attorney fees or other outside consultant fees for costs
234 incurred after the protest or appeal. By December 31, 2015, the
235 commission must adopt rules to administer this subsection.

236 Section 6. Section 367.0816, Florida Statutes, is amended
237 to read:

238 367.0816 Recovery of rate case expenses.—

239 (1) The amount of rate case expense determined by the
240 commission pursuant to the provisions of this chapter to be
241 recovered through a public utilities rate shall be apportioned
242 for recovery over a period of 4 years. At the conclusion of the
243 recovery period, the rate of the public utility shall be reduced
244 immediately by the amount of rate case expense previously
245 included in rates.

246 (2) A utility may not recover the 4-year amortized rate
247 case expense for more than one rate case at any given time. If
248 the commission approves and a utility implements a rate change
249 from a subsequent rate case pursuant to this section, the
250 utility forfeits any unamortized rate case expense from a prior
251 rate case. The unamortized portion of rate case expense for a
252 prior case must be removed from rates before the implementation
253 of an additional amortized rate case expense for the most recent
254 rate proceeding.

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

257 367.111 Service.—

258 (3) The commission may, on its own motion or based on
259 complaints of customers of a water utility subject to its
260 jurisdiction, review water quality as it pertains to secondary
261 drinking water standards established by the Department of

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262 Environmental Protection. The commission may, on its own motion
263 or based on complaints of customers of a wastewater utility
264 subject to its jurisdiction, review wastewater service as it
265 pertain to odor, noise, aerosol drift, or lighting.

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

268 403.8532 Drinking water state revolving loan fund; use;
269 rules.—

270 (3) The department may make, or request that the
271 corporation make, loans, grants, and deposits to community water
272 systems; for-profit, privately owned or investor-owned water
273 systems; ~~nonprofit, transient, noncommunity water systems; and~~ and
274 nonprofit, nontransient, noncommunity water systems to assist
275 them in planning, designing, and constructing public water
276 ~~systems, unless such public water systems are for-profit~~
277 ~~privately owned or investor-owned systems that regularly serve~~
278 ~~1,500 service connections or more within a single certified or~~
279 ~~franchised area. However, a for-profit privately owned or~~
280 ~~investor-owned public water system that regularly serves 1,500~~
281 ~~service connections or more within a single certified or~~
282 ~~franchised area may qualify for a loan only if the proposed~~
283 ~~project will result in the consolidation of two or more public~~
284 ~~water systems.~~ The department may provide loan guarantees,
285 purchase loan insurance, and refinance local debt through the
286 issue of new loans for projects approved by the department.
287 Public water systems may borrow funds made available pursuant to
288 this section and may pledge any revenues or other adequate
289 security available to them to repay any funds borrowed.

290 (a) The department shall administer loans so that amounts

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291 credited to the Drinking Water Revolving Loan Trust Fund in any
292 fiscal year are reserved for the following purposes:

293 1. At least 15 percent for qualifying small public water
294 systems.

295 2. Up to 15 percent for qualifying financially
296 disadvantaged communities.

297 (b) If an insufficient number of the projects for which
298 funds are reserved under this subsection have been submitted to
299 the department at the time the funding priority list authorized
300 under this section is adopted, the reservation of these funds no
301 longer applies. The department may award the unreserved funds as
302 otherwise provided in this section.

303 Section 9. Section 367.084, Florida Statutes, is amended to
304 read:

305 367.084 Rate adjustment orders.—~~An~~ Any order issued by the
306 commission adjusting general increases or reductions of the
307 rates and charges of a ~~any~~ utility or regulated company must be
308 reduced to writing, including any dissenting or concurring
309 opinions, within 20 days after the official vote of the
310 commission. Within such 20-day period, the commission shall also
311 mail a copy to the clerk of the circuit court of each county in
312 which customers of the utility or regulated company are served
313 who are affected by the rate adjustment, which copy must be kept
314 on file and made available to the public. The commission shall
315 notify all parties of record in the proceeding of the date of
316 such mailing. Such an order is not considered rendered for
317 purposes of appeal, rehearing, or judicial review until the date
318 the copies are mailed as required by this section. This
319 provision does not delay the effective date of the order. Such

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320 an order is considered rendered on the date of the official vote
321 for the purposes of s. 367.081(7) ~~s. 367.081(6)~~.

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

324 367.171 Effectiveness of this chapter.-

325 (8) Each county that ~~which~~ is not subject to ~~excluded from~~
326 ~~the provisions of~~ this chapter shall regulate the rates of all
327 utilities in that county which would otherwise be subject to
328 regulation by the commission pursuant to s. 367.081(1), (2),
329 (3), and (7) ~~(6)~~. The county may ~~shall~~ not regulate the rates or
330 charges of any system or facility that ~~which~~ would otherwise be
331 exempt from commission regulation pursuant to s. 367.022(2). For
332 this purpose the county or its agency shall proceed as though
333 the county or agency is the commission.

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