

By the Committee on Environmental Preservation and Conservation;
and Senator Hays

592-02524-15

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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 certain expenses for more than
33 one rate case at a time; amending s. 367.111, F.S.;
34 authorizing the commission to review water quality and
35 wastewater service under certain circumstances;
36 amending s. 403.8532, F.S.; authorizing the Department
37 of Environmental Protection to require or request that
38 the Florida Water Pollution Control Financing
39 Corporation make loans, grants, and deposits to for-
40 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) Any 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 for existing distribution and
109 collection infrastructure that is nearing the end of its useful
110 life or is negatively impacting water quality or reliability of
111 service, to be funded by a portion of the rates charged by the
112 utility, by a secured escrow account, or through a letter of
113 credit. The commission shall adopt rules to govern the
114 implementation, management, and utilization of the fund,
115 including, but not limited to, rules related to expenses for
116 which the fund may be used, segregation of reserve account

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117 funds, requirements for a capital improvement plan, and
118 requirements for commission authorization before disbursements
119 are made from the fund.

120 (4)

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

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146 ~~supplier of electric power, or the regulatory assessment fees~~
147 ~~imposed upon it by the commission. The approved rates of any~~
148 ~~utility shall be automatically increased, without hearing, upon~~
149 ~~verified notice to the commission 45 days prior to~~
150 ~~implementation of the increase that costs have been incurred for~~
151 ~~water quality or wastewater quality testing required by the~~
152 ~~Department of Environmental Protection.~~

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

164 a. The rates charged by a governmental authority or other
165 water or wastewater utility regulated by the commission which
166 provides utility service to the utility.

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

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

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

174 e. The regulatory assessment fees imposed upon the utility

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175 by the commission.

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

178 g. The fees charged for wastewater biosolids disposal.

179 h. Costs incurred for any tank inspection required by the
180 Department of Environmental Protection or a local governmental
181 authority.

182 i. Operator and distribution license fees required by the
183 Department of Environmental Protection or a local governmental
184 authority.

185 j. Water or wastewater operating permit fees charged by the
186 Department of Environmental Protection or a local governmental
187 authority.

188 k. Consumptive or water use permit fees charged by a water
189 management district.

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

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

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204 additional items should be included.

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

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

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

220 367.0814 Staff assistance in changing rates and charges;
221 interim rates.—

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

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233 staff report is made available to customers and the utility. If
234 there is a protest or appeal by a party other than the utility,
235 the commission may award rate case expense to the utility for
236 attorney fees or other outside consultant fees for costs
237 incurred after the protest or appeal. By December 31, 2015, the
238 commission must adopt rules to administer this subsection.

239 Section 6. Section 367.0816, Florida Statutes, is amended
240 to read:

241 367.0816 Recovery of rate case expenses.—

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

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

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

260 367.111 Service.—

261 (3) The commission may, on its own motion or based on

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262 complaints of customers of a water utility subject to its
263 jurisdiction, review water quality as it pertains to secondary
264 drinking water standards established by the Department of
265 Environmental Protection. The commission may, on its own motion
266 or based on complaints of customers of a wastewater utility
267 subject to its jurisdiction, review wastewater service as it
268 pertains to odor, noise, aerosol drift, or lighting.

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

271 403.8532 Drinking water state revolving loan fund; use;
272 rules.-

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

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291 this section and may pledge any revenues or other adequate
292 security available to them to repay any funds borrowed.

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

296 1. At least 15 percent for qualifying small public water
297 systems.

298 2. Up to 15 percent for qualifying financially
299 disadvantaged communities.

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

306 Section 9. Section 367.084, Florida Statutes, is amended to
307 read:

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

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320 purposes of appeal, rehearing, or judicial review until the date
321 the copies are mailed as required by this section. This
322 provision does not delay the effective date of the order. Such
323 an order is considered rendered on the date of the official vote
324 for the purposes of s. 367.081(7) ~~s. 367.081(6)~~.

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

327 367.171 Effectiveness of this chapter.-

328 (8) Each county that ~~which~~ is not subject to ~~excluded from~~
329 ~~the provisions of~~ this chapter shall regulate the rates of all
330 utilities in that county which would otherwise be subject to
331 regulation by the commission pursuant to s. 367.081(1), (2),
332 (3), and (7) and s. 367.165 ~~(6)~~. The county shall not regulate
333 the rates or charges of any system or facility that ~~which~~ would
334 otherwise be exempt from commission regulation pursuant to s.
335 367.022(2). For this purpose the county or its agency shall
336 proceed as though the county or agency is the commission.

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