

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 and 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 commission to create a utility reserve  
16          fund; requiring the commission to adopt rules to  
17          govern the implementation, management, and use of the  
18          fund; establishing criteria for adjusted rates;  
19          specifying expense items that may be the basis for an  
20          automatic increase or decrease of a utility's rates;  
21          authorizing the commission to establish by rule  
22          additional specified expense items; restricting a  
23          utility from recovering more than a certain percentage  
24          of reasonable rate case expenses; amending s.  
25          367.0814, F.S.; authorizing the commission to award  
26          rate case expenses to recover attorney fees or fees of

27 other outside consultants in certain circumstances;  
 28 requiring the commission to adopt rules by a certain  
 29 date; amending s. 367.0816, F.S.; prohibiting a  
 30 utility from recovering certain expenses for more than  
 31 one rate case at a time; amending s. 367.111, F.S.;  
 32 authorizing the commission to review water quality and  
 33 wastewater service under certain circumstances;  
 34 amending s. 403.8532, F.S.; authorizing the Department  
 35 of Environmental Protection to require or request that  
 36 the Florida Water Pollution Control Financing  
 37 Corporation make loans, grants, and deposits to for-  
 38 profit, privately owned, or investor-owned water  
 39 systems; removing current restrictions on such  
 40 activities; amending s. 367.171, F.S.; making  
 41 technical changes; providing an effective date.

42

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

44

45 Section 1. Section 159.8105, Florida Statutes, is created  
 46 to read:

47 159.8105 Allocation of bonds for water and wastewater  
 48 infrastructure projects.—The division shall review the  
 49 allocation of private activity bonds to determine the  
 50 availability of additional allocation and reallocation of bonds  
 51 for water and wastewater infrastructure projects.

52 Section 2. Paragraph (ooo) is added to subsection (7) of

53 section 212.08, Florida Statutes, to read:

54 212.08 Sales, rental, use, consumption, distribution, and  
55 storage tax; specified exemptions.—The sale at retail, the  
56 rental, the use, the consumption, the distribution, and the  
57 storage to be used or consumed in this state of the following  
58 are hereby specifically exempt from the tax imposed by this  
59 chapter.

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

78 (ooo) Investor-owned water and wastewater utilities.—Sales

79 or leases to an investor-owned water or wastewater utility owned  
 80 or operated by a Florida corporation are exempt from the tax  
 81 imposed by this chapter if the sole or primary function of the  
 82 corporation is to construct, maintain, or operate a water or  
 83 wastewater system in this state and if the goods or services  
 84 purchased or leased are used in this state.

85 Section 3. Subsections (9) through (12) of section  
 86 367.022, Florida Statutes, are renumbered as subsections (10)  
 87 through (13), respectively, and a new subsection (9) is added to  
 88 that section to read:

89 367.022 Exemptions.—The following are not subject to  
 90 regulation by the commission as a utility nor are they subject  
 91 to the provisions of this chapter, except as expressly provided:

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

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

101 367.081 Rates; procedure for fixing and changing.—

102 (2)

103 (c) In establishing rates for a utility, the commission  
 104 may create a utility reserve fund for infrastructure repair and

105 replacement for a utility for existing distribution and  
106 collection infrastructure that is nearing the end of its useful  
107 life or is detrimental to water quality or reliability of  
108 service, to be funded by a portion of the rates charged by the  
109 utility, by a secured escrow account, or through a letter of  
110 credit. The commission shall adopt rules to govern the  
111 implementation, management, and use of the fund, including, but  
112 not limited to, rules related to expenses for which the fund may  
113 be used, segregation of reserve account funds, requirements for  
114 a capital improvement plan, and requirements for commission  
115 authorization before disbursements are made from the fund.

116 (4)

117 (b) The approved rates of any utility ~~which receives all~~  
118 ~~or any portion of its utility service from a governmental~~  
119 ~~authority or from a water or wastewater utility regulated by the~~  
120 ~~commission and which redistributes that service to its utility~~  
121 ~~customers shall be automatically increased or decreased without~~  
122 ~~hearing, upon verified notice to the commission 45 days prior to~~  
123 ~~its implementation of the increase or decrease that the~~  
124 utility's costs for any specified expense item ~~rates charged by~~  
125 ~~the governmental authority or other utility have changed. The~~  
126 ~~approved rates of any utility which is subject to an increase or~~  
127 ~~decrease in the rates or fees that it is charged for electric~~  
128 ~~power, the amount of ad valorem taxes assessed against its used~~  
129 ~~and useful property, the fees charged by the Department of~~  
130 ~~Environmental Protection in connection with the National~~

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

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

157 expense items that are eligible for automatic increase or  
158 decrease of a utility's rates include, but are not limited to:  
159 a. The rates charged by a governmental authority or other  
160 water or wastewater utility regulated by the commission which  
161 provides utility service to the utility.  
162 b. The rates or fees that the utility is charged for  
163 electric power.  
164 c. The amount of ad valorem taxes assessed against the  
165 utility's used and useful property.  
166 d. The fees charged by the Department of Environmental  
167 Protection in connection with the National Pollutant Discharge  
168 Elimination System Program.  
169 e. The regulatory assessment fees imposed upon the utility  
170 by the commission.  
171 f. Costs incurred for water quality or wastewater quality  
172 testing required by the Department of Environmental Protection.  
173 g. The fees charged for wastewater biosolids disposal.  
174 h. Costs incurred for any tank inspection required by the  
175 Department of Environmental Protection or a local governmental  
176 authority.  
177 i. Treatment plant operator and water distribution system  
178 operator license fees required by the Department of  
179 Environmental Protection or a local governmental authority.  
180 j. Water or wastewater operating permit fees charged by  
181 the Department of Environmental Protection or a local  
182 governmental authority.

183 k. Consumptive or water use permit fees charged by a water  
 184 management district.

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

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

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

203 (7) The commission shall determine the reasonableness of  
 204 rate case expenses and shall disallow all rate case expenses  
 205 determined to be unreasonable. No rate case expense determined  
 206 to be unreasonable shall be paid by a consumer. In determining  
 207 the reasonable level of rate case expense, the commission shall  
 208 consider the extent to which a utility has utilized or failed to

209 utilize ~~the provisions of~~ paragraph (4) (a) or paragraph (4) (b)  
210 and such other criteria as it may establish by rule. A utility  
211 may recover only up to 50 percent of rate case expenses that are  
212 determined to be reasonable.

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

215 367.0814 Staff assistance in changing rates and charges;  
216 interim rates.—

217 (3) The provisions of s. 367.081(1), (2) (a), and (3) shall  
218 apply in determining the utility's rates and charges. However,  
219 the commission may not award rate case expenses to recover  
220 attorney fees or fees of other outside consultants who are  
221 engaged for the purpose of preparing or filing the case if a  
222 utility receives staff assistance in changing rates and charges  
223 pursuant to this section, unless the Office of Public Counsel or  
224 interested parties have intervened. The commission may award  
225 rate case expenses for attorney fees or fees of other outside  
226 consultants if such fees are incurred for the purpose of  
227 providing consulting or legal services to the utility after the  
228 initial staff report is made available to customers and the  
229 utility. If there is a protest or appeal by a party other than  
230 the utility, the commission may award rate case expenses to the  
231 utility for attorney fees or fees of other outside consultants  
232 for costs incurred after the protest or appeal. By December 31,  
233 2016, the commission must adopt rules to administer this  
234 subsection.

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

237 367.0816 Recovery of rate case expenses.—

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

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

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

256 367.111 Service.—

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

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

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

267 403.8532 Drinking water state revolving loan fund; use;  
 268 rules.—

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

287 | this section and may pledge any revenues or other adequate  
 288 | security available to them to repay any funds borrowed.

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

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

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

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

302 | Section 9. Subsection (8) of section 367.171, Florida  
 303 | Statutes, is amended to read:

304 | 367.171 Effectiveness of this chapter.—

305 | (8) Each county that ~~which~~ is not subject to ~~excluded from~~  
 306 | ~~the provisions of~~ this chapter shall regulate the rates of all  
 307 | utilities in that county which would otherwise be subject to  
 308 | regulation by the commission pursuant to ss. s. 367.081(1), (2),  
 309 | (3), and (6) and 367.165. The county shall not regulate the  
 310 | rates or charges of any system or facility that ~~which~~ would  
 311 | otherwise be exempt from commission regulation pursuant to s.  
 312 | 367.022(2). For this purpose, the county or its agency shall

HB 491

2016

313 | proceed as though the county or agency is the commission.

314 |       Section 10. This act shall take effect July 1, 2016.