

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 requiring 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; amending s.
23 367.0814, F.S.; requiring the commission to award rate
24 case expenses to recover attorney fees or fees of
25 other outside consultants in certain circumstances;
26 requiring the commission to adopt rules by a certain

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

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

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 43 Section 1. Section 159.8105, Florida Statutes, is created
 44 to read:

45 159.8105 Allocation of bonds for water and wastewater
 46 infrastructure projects.—The division shall review the
 47 allocation of private activity bonds to determine the
 48 availability of additional allocation and reallocation of bonds
 49 for water and wastewater infrastructure projects.

50 Section 2. Paragraph (ooo) is added to subsection (7) of
 51 section 212.08, Florida Statutes, to read:

52 212.08 Sales, rental, use, consumption, distribution, and

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

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

76 (ooo) Investor-owned water and wastewater utilities.—Sales
77 or leases to an investor-owned water or wastewater utility owned
78 or operated by a Florida corporation are exempt from the tax

79 imposed by this chapter if the sole or primary function of the
 80 corporation is to construct, maintain, or operate a water or
 81 wastewater system in this state and if the goods or services
 82 purchased or leased are used in this state.

83 Section 3. Subsections (9) through (12) of section
 84 367.022, Florida Statutes, are renumbered as subsections (10)
 85 through (13), respectively, and a new subsection (9) is added to
 86 that section to read:

87 367.022 Exemptions.—The following are not subject to
 88 regulation by the commission as a utility nor are they subject
 89 to the provisions of this chapter, except as expressly provided:

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

95 Section 4. Paragraph (c) is added to subsection (2) of
 96 section 367.081, Florida Statutes, and paragraph (b) of
 97 subsection (4) of that section is amended, to read:

98 367.081 Rates; procedure for fixing and changing.—

99 (2)

100 (c) In establishing rates for a utility, the commission,
 101 upon petition by the utility, shall create a utility reserve
 102 fund for infrastructure repair and replacement for a utility for
 103 existing distribution and collection infrastructure that is
 104 nearing the end of its useful life or is detrimental to water

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

114 (4)

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

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

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

- 157 a. The rates charged by a governmental authority or other
158 water or wastewater utility regulated by the commission which
159 provides utility service to the utility.
- 160 b. The rates or fees that the utility is charged for
161 electric power.
- 162 c. The amount of ad valorem taxes assessed against the
163 utility's used and useful property.
- 164 d. The fees charged by the Department of Environmental
165 Protection in connection with the National Pollutant Discharge
166 Elimination System Program.
- 167 e. The regulatory assessment fees imposed upon the utility
168 by the commission.
- 169 f. Costs incurred for water quality or wastewater quality
170 testing required by the Department of Environmental Protection.
- 171 g. The fees charged for wastewater biosolids disposal.
- 172 h. Costs incurred for any tank inspection required by the
173 Department of Environmental Protection or a local governmental
174 authority.
- 175 i. Treatment plant operator and water distribution system
176 operator license fees required by the Department of
177 Environmental Protection or a local governmental authority.
- 178 j. Water or wastewater operating permit fees charged by
179 the Department of Environmental Protection or a local
180 governmental authority.
- 181 k. Consumptive or water use permit fees charged by a water
182 management district.

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

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

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

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

203 367.0814 Staff assistance in changing rates and charges;
204 interim rates.—

205 (3) The provisions of s. 367.081(1), (2)(a), and (3) shall
206 apply in determining the utility's rates and charges. However,
207 the commission may not award rate case expenses to recover
208 attorney fees or fees of other outside consultants who are

209 engaged for the purpose of preparing or filing the case if a
 210 utility receives staff assistance in changing rates and charges
 211 pursuant to this section, unless the Office of Public Counsel or
 212 interested parties have intervened. The commission may award
 213 rate case expenses for attorney fees or fees of other outside
 214 consultants if such fees are incurred for the purpose of
 215 providing consulting or legal services to the utility after the
 216 initial staff report is made available to customers and the
 217 utility. If there is a protest or appeal by a party other than
 218 the utility, the commission shall award rate case expenses to
 219 the utility for attorney fees or fees of other outside
 220 consultants for costs incurred after the protest or appeal. By
 221 December 31, 2016, the commission must adopt rules to administer
 222 this subsection.

223 Section 6. Section 367.0816, Florida Statutes, is amended
 224 to read:

225 367.0816 Recovery of rate case expenses.—

226 (1) The amount of rate case expense determined by the
 227 commission pursuant to ~~the provisions of~~ this chapter to be
 228 recovered through a public utilities rate shall be apportioned
 229 for recovery over a period of 4 years. At the conclusion of the
 230 recovery period, the rate of the public utility shall be reduced
 231 immediately by the amount of rate case expense previously
 232 included in rates.

233 (2) A utility may not recover the 4-year amortized rate
 234 case expense for more than one rate case at any given time. If

235 the commission approves and a utility implements a rate change
236 from a subsequent rate case pursuant to this section, any
237 unamortized rate case expense for a prior rate case must be
238 discontinued. The unamortized portion of rate case expense for a
239 prior rate case must be removed from rates before the
240 implementation of an additional amortized rate case expense for
241 the most recent rate proceeding.

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

244 367.111 Service.—

245 (3) The commission may, on its own motion or based on
246 complaints of customers of a water utility subject to its
247 jurisdiction, review water quality as it pertains to secondary
248 drinking water standards established by the Department of
249 Environmental Protection. The commission may, on its own motion
250 or based on complaints of customers of a wastewater utility
251 subject to its jurisdiction, review wastewater service as it
252 pertains to odor, noise, aerosol drift, or lighting.

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

255 403.8532 Drinking water state revolving loan fund; use;
256 rules.—

257 (3) The department may make, or request that the
258 corporation make, loans, grants, and deposits to community water
259 systems; for-profit, privately owned, or investor-owned water
260 systems; nonprofit, transient, noncommunity water systems;~~7~~ and

261 nonprofit, nontransient, noncommunity water systems to assist
262 them in planning, designing, and constructing public water
263 systems, ~~unless such public water systems are for profit~~
264 ~~privately owned or investor-owned systems that regularly serve~~
265 ~~1,500 service connections or more within a single certified or~~
266 ~~franchised area. However, a for profit privately owned or~~
267 ~~investor-owned public water system that regularly serves 1,500~~
268 ~~service connections or more within a single certified or~~
269 ~~franchised area may qualify for a loan only if the proposed~~
270 ~~project will result in the consolidation of two or more public~~
271 ~~water systems.~~ The department may provide loan guarantees,
272 purchase loan insurance, and refinance local debt through the
273 issue of new loans for projects approved by the department.
274 Public water systems may borrow funds made available pursuant to
275 this section and may pledge any revenues or other adequate
276 security available to them to repay any funds borrowed.

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

280 1. At least 15 percent for qualifying small public water
281 systems.

282 2. Up to 15 percent for qualifying financially
283 disadvantaged communities.

284 (b) If an insufficient number of the projects for which
285 funds are reserved under this subsection have been submitted to
286 the department at the time the funding priority list authorized

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287 | under this section is adopted, the reservation of these funds no
288 | longer applies. The department may award the unreserved funds as
289 | otherwise provided in this section.

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

292 | 367.171 Effectiveness of this chapter.—

293 | (8) Each county that ~~which~~ is not subject to ~~excluded from~~
294 | ~~the provisions of~~ this chapter shall regulate the rates of all
295 | utilities in that county which would otherwise be subject to
296 | regulation by the commission pursuant to ss. s. 367.081(1), (2),
297 | (3), and (6) and 367.165. The county shall not regulate the
298 | rates or charges of any system or facility that ~~which~~ would
299 | otherwise be exempt from commission regulation pursuant to s.
300 | 367.022(2). For this purpose, the county or its agency shall
301 | proceed as though the county or agency is the commission.

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