



146416

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/12/2016	.	
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The Committee on Communications, Energy, and Public Utilities
(Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 78 - 313

and insert:

(ooo) Investor-owned water and wastewater utilities.-Sales
or leases to an investor-owned water or wastewater utility
holding a certificate of authorization under s. 367.031 are
exempt from the tax imposed by this chapter if the sole or
primary function of the utility is to construct, maintain, or
operate a water or wastewater system in this state and if the



146416

11 goods or services purchased or leased are used in this state.

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

16 367.022 Exemptions.—The following are not subject to
17 regulation by the commission as a utility nor are they subject
18 to the provisions of this chapter, except as expressly provided:

19 (9) Any person who resells water service to his or her
20 tenants or to individually metered residents for a fee that does
21 not exceed the actual purchase price of the water service plus
22 the actual cost of meter reading and billing, not to exceed 9
23 percent of the actual cost of water service.

24 Section 4. Paragraph (c) is added to subsection (2) of
25 section 367.081, Florida Statutes, and paragraph (b) of
26 subsection (4) and subsection (7) of that section are amended,
27 to read:

28 367.081 Rates; procedure for fixing and changing.—

29 (2)

30 (c) In establishing rates for a utility, upon its own
31 motion or upon the request of a utility, the commission may
32 authorize a utility to create a utility reserve fund for
33 infrastructure repair and replacement for a utility for existing
34 distribution and collection infrastructure that is nearing the
35 end of its useful life or is detrimental to water quality or
36 reliability of service, to be funded by a portion of the rates
37 charged by the utility, by a secured escrow account, or through
38 a letter of credit. The commission shall adopt rules to govern
39 the implementation, management, and use of the fund, including,



40 but not limited to, rules related to expenses for which the fund
41 may be used, segregation of reserve account funds, requirements
42 for a capital improvement plan, and requirements for commission
43 authorization before disbursements are made from the fund.

44 (4)

45 (b) ~~The approved rates of any utility which receives all or~~
46 ~~any portion of its utility service from a governmental authority~~
47 ~~or from a water or wastewater utility regulated by the~~
48 ~~commission and which redistributes that service to its utility~~
49 ~~customers shall be automatically increased or decreased without~~
50 ~~hearing, upon verified notice to the commission 45 days before~~
51 ~~prior to its implementation of the increase or decrease that the~~
52 ~~utility's costs for any specified expense item the rates charged~~
53 ~~by the governmental authority or other utility have changed. The~~
54 ~~approved rates of any utility which is subject to an increase or~~
55 ~~decrease in the rates or fees that it is charged for electric~~
56 ~~power, the amount of ad valorem taxes assessed against its used~~
57 ~~and useful property, the fees charged by the Department of~~
58 ~~Environmental Protection in connection with the National~~
59 ~~Pollutant Discharge Elimination System Program, or the~~
60 ~~regulatory assessment fees imposed upon it by the commission~~
61 ~~shall be increased or decreased by the utility, without action~~
62 ~~by the commission, upon verified notice to the commission 45~~
63 ~~days prior to its implementation of the increase or decrease~~
64 ~~that the rates charged by the supplier of the electric power or~~
65 ~~the taxes imposed by the governmental authority, or the~~
66 ~~regulatory assessment fees imposed upon it by the commission~~
67 ~~have changed. The new rates authorized shall reflect the amount~~
68 ~~of the change of the ad valorem taxes or rates imposed upon the~~



146416

69 ~~utility by the governmental authority, other utility, or~~
70 ~~supplier of electric power, or the regulatory assessment fees~~
71 ~~imposed upon it by the commission. The approved rates of any~~
72 ~~utility shall be automatically increased, without hearing, upon~~
73 ~~verified notice to the commission 45 days prior to~~
74 ~~implementation of the increase that costs have been incurred for~~
75 ~~water quality or wastewater quality testing required by the~~
76 ~~Department of Environmental Protection.~~

77 1. The new rates authorized shall reflect, on an amortized
78 or annual basis, as appropriate, the cost of, or the amount of
79 change in the cost of, the specified expense item, required
80 water quality or wastewater quality testing performed by
81 laboratories approved by the Department of Environmental
82 Protection for that purpose. The new rates, however, shall not
83 reflect the costs of any specified expense item any required
84 water quality or wastewater quality testing already included in
85 a utility's rates. Specified expense items that are eligible for
86 automatic increase or decrease of a utility's rates include, but
87 are not limited to:

88 a. The rates charged by a governmental authority or other
89 water or wastewater utility regulated by the commission which
90 provides utility service to the utility.

91 b. The rates or fees that the utility is charged for
92 electric power.

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

95 d. The fees charged by the Department of Environmental
96 Protection in connection with the National Pollutant Discharge
97 Elimination System Program.



146416

98 e. The regulatory assessment fees imposed upon the utility
99 by the commission.

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

102 g. The fees charged for wastewater biosolids disposal.

103 h. Costs incurred for any tank inspection required by the
104 Department of Environmental Protection or a local governmental
105 authority.

106 i. Treatment plant operator and water distribution system
107 operator license fees required by the Department of
108 Environmental Protection or a local governmental authority.

109 j. Water or wastewater operating permit fees charged by the
110 Department of Environmental Protection or a local governmental
111 authority.

112 k. Consumptive or water use permit fees charged by a water
113 management district.

114 2. A utility may not use this procedure to increase its
115 rates as a result of an increase in a specific expense item
116 which occurred ~~water quality or wastewater quality testing or an~~
117 ~~increase in the cost of purchased water services, sewer~~
118 ~~services, or electric power or in assessed ad valorem taxes,~~
119 ~~which increase was initiated~~ more than 12 months before the
120 filing by the utility.

121 3. The commission may establish by rule additional specific
122 expense items that are outside the control of the utility and
123 have been imposed upon the utility by a federal, state, or local
124 law, rule, order, or notice. If the commission establishes such
125 a rule, the commission shall review the rule at least once every
126 5 years and determine whether each expense item should continue



146416

127 to be cause for an automatic increase or decrease and whether
128 additional items should be included.

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

132 (7) The commission shall determine the reasonableness of
133 rate case expenses and shall disallow all rate case expenses
134 determined to be unreasonable. No rate case expense determined
135 to be unreasonable shall be paid by a consumer.

136 (a) In determining the reasonable level of rate case
137 expense, the commission shall consider the following criteria
138 and disallow a rate case expense based upon:

139 1. The extent to which a utility has utilized or failed to
140 utilize ~~the provisions of~~ paragraph (4) (a) or paragraph (4) (b).

141 2. Whether the customers have received a material benefit
142 as a result of the rate case.

143 3. The amount of time between each rate case.

144 4. The extent to which a utility has used automatic
145 increases or decreases authorized under subsection (4).

146 5. The extent to which, at the time of the initial filing,
147 the utility filed complete documentation as required by
148 commission rule, including, but not limited to, minimum filing
149 requirements.

150 6. Whether the utility's rate case filing seeks
151 preferential benefits to shareholders, owners, or nonregulated
152 affiliates.

153 7. The proportion of any rate increase approved by the
154 commission as compared to the amount initially requested by the
155 utility.



146416

156 8. The amount of overall rate case expense incurred and
157 requested as compared to the amount of rate increase approved by
158 the commission.

159 9. The quality of service provided by the utility; and

160 10. Such other criteria as it may establish by rule.

161 (b) The commission shall make specific findings of fact,
162 supported by competent, substantial evidence, for each criterion
163 and the extent to which each criterion benefits the customer.
164 The commission may allocate the benefits between the customers
165 and the shareholders, owners, or affiliates accordingly.

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

168 367.0814 Staff assistance in changing rates and charges;
169 interim rates.—

170 (3) The provisions of s. 367.081(1), (2)(a), and (3) shall
171 apply in determining the utility's rates and charges. However,
172 the commission may not award rate case expenses to recover
173 attorney fees or fees of other outside consultants who are
174 engaged for the purpose of preparing or filing the case if a
175 utility receives staff assistance in changing rates and charges
176 pursuant to this section, unless the Office of Public Counsel or
177 interested parties have intervened. The commission may award
178 rate case expenses for attorney fees or fees of other outside
179 consultants if such fees are incurred for the purpose of
180 providing consulting or legal services to the utility after the
181 initial staff report is made available to customers and the
182 utility. If there is a protest or an appeal by a party other
183 than the utility, the commission may award rate case expenses to
184 the utility for attorney fees or fees of other outside



146416

185 consultants for costs incurred after the protest or appeal. By
186 December 31, 2016, the commission must adopt rules to administer
187 this subsection.

188 Section 6. Section 367.0816, Florida Statutes, is amended
189 to read:

190 367.0816 Recovery of rate case expenses.—

191 (1) The amount of rate case expense determined by the
192 commission pursuant to ~~the provisions of~~ this chapter to be
193 recovered through a public utilities rate shall be apportioned
194 for recovery over a period of 4 years. At the conclusion of the
195 recovery period, the rate of the public utility shall be reduced
196 immediately by the amount of rate case expense previously
197 included in rates.

198 (2) A utility may not recover the 4-year amortized rate
199 case expense for more than one rate case at any given time. If
200 the commission approves and a utility implements a rate change
201 from a subsequent rate case pursuant to this section, any
202 unamortized rate case expense for a prior rate case must be
203 discontinued. The unamortized portion of rate case expense for a
204 prior rate case must be removed from rates before the
205 implementation of an additional amortized rate case expense for
206 the most recent rate proceeding.

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

209 367.111 Service.—

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



146416

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

218 Section 8. Section 367.165, Florida Statutes, is amended to
219 read:

220 367.165 Abandonment.—It is the intent of the Legislature
221 that water or wastewater service to the customers of a utility
222 not be interrupted by the abandonment or placement into
223 receivership of the utility. Notwithstanding s. 367.171, this
224 section applies to each county. To that end:

225 (1) A ~~No~~ person, lessee, trustee, or receiver owning,
226 operating, managing, or controlling a utility may not shall
227 abandon the utility without giving 60 days' notice to the county
228 or counties in which the utility is located and to the
229 commission. Anyone who violates ~~the provisions of this~~
230 subsection is guilty of a misdemeanor of the first degree,
231 punishable as provided in s. 775.082 or s. 775.083. Each day of
232 such abandonment constitutes a separate offense. In addition,
233 such act is a violation of this chapter, and the commission may
234 impose upon the utility a penalty for each such offense of not
235 more than \$5,000 or may amend, suspend, or revoke its
236 certificate of authorization; each day of such abandonment
237 without prior notice constitutes a separate offense.

238 (2) After receiving such notice, the county, or counties
239 acting jointly if more than one county is affected, shall
240 petition the circuit court of the judicial circuit in which such
241 utility is domiciled to appoint a receiver, which may be the
242 governing body of a political subdivision or any other person



146416

243 deemed appropriate. The receiver shall operate the utility from
244 the date of abandonment until such time as the receiver disposes
245 of the property of the utility in a manner designed to continue
246 the efficient and effective operation of utility service.

247 (3) The notification to the commission under subsection (1)
248 is sufficient cause for revocation, suspension, or amendment of
249 the certificate of authorization of the utility as of the date
250 of abandonment. The receiver operating such utility shall be
251 considered to hold a temporary authorization from the
252 commission, and the approved rates of the utility shall be
253 deemed to be the interim rates of the receiver until modified by
254 the commission.

255 Section 9. Subsection (3) of section 403.8532, Florida
256 Statutes, is amended to read:

257 403.8532 Drinking water state revolving loan fund; use;
258 rules.—

259 (3) The department may make, or request that the
260 corporation make, loans, grants, and deposits to community water
261 systems; for-profit, privately owned, or investor-owned water
262 systems; ~~nonprofit, transient, noncommunity water systems;~~ and
263 nonprofit, nontransient, noncommunity water systems to assist
264 them in planning, designing, and constructing public water
265 systems, ~~unless such public water systems are for-profit~~
266 ~~privately owned or investor-owned systems that regularly serve~~
267 ~~1,500 service connections or more within a single certified or~~
268 ~~franchised area. However, a for-profit privately owned or~~
269 ~~investor-owned public water system that regularly serves 1,500~~
270 ~~service connections or more within a single certified or~~
271 ~~franchised area may qualify for a loan only if the proposed~~



146416

272 ~~project will result in the consolidation of two or more public~~
273 ~~water systems.~~ The department may provide loan guarantees,
274 purchase loan insurance, and refinance local debt through the
275 issue of new loans for projects approved by the department.
276 Public water systems may borrow funds made available pursuant to
277 this section and may pledge any revenues or other adequate
278 security available to them to repay any funds borrowed.

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

282 1. At least 15 percent for qualifying small public water
283 systems.

284 2. Up to 15 percent for qualifying financially
285 disadvantaged communities.

286 (b) If an insufficient number of the projects for which
287 funds are reserved under this subsection have been submitted to
288 the department at the time the funding priority list authorized
289 under this section is adopted, the reservation of these funds no
290 longer applies. The department may award the unreserved funds as
291 otherwise provided in this section.

292
293 ===== T I T L E A M E N D M E N T =====

294 And the title is amended as follows:

295 Delete lines 15 - 41

296 and insert:

297 authorizing the commission to allow a utility to
298 create a reserve fund upon the commission's own motion
299 or upon the request of the utility; requiring the
300 commission to adopt rules to govern the



146416

301 implementation, management, and use of the fund;
302 establishing criteria for adjusted rates; specifying
303 expense items that may be the basis for an automatic
304 increase or decrease of a utility's rates; authorizing
305 the commission to establish by rule additional
306 specified expense items; requiring the commission to
307 consider certain criteria and make findings and
308 allocations among the ratepayers, shareholders,
309 owners, or affiliates when determining reasonable rate
310 case expenses; amending s. 367.0814, F.S.; authorizing
311 the commission to award rate case expenses to recover
312 attorney fees or fees of other outside consultants in
313 certain circumstances; requiring the commission to
314 adopt rules by a certain date; amending s. 367.0816,
315 F.S.; prohibiting a utility from recovering certain
316 expenses for more than one rate case at a time;
317 amending s. 367.111, F.S.; authorizing the commission
318 to review water quality and wastewater service upon
319 its own motion or based on complaints of customers;
320 amending s. 367.165, F.S.; requiring a county that
321 regulates water or wastewater services to comply with
322 the requirements for abandoned water and wastewater
323 systems; amending s. 403.8532, F.S.; authorizing the
324 Department of Environmental Protection to require or
325 request that the Florida Water Pollution Control
326 Financing Corporation make loans, grants, and deposits
327 to for-profit, privately owned, or investor-owned
328 water systems; deleting restrictions on such
329 activities; providing an effective date.