

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 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

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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

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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. Present subsections (9) through (12) of section
86 367.022, Florida Statutes, are redesignated as subsections (10)
87 through (13), respectively, and a new subsection (9) is added to

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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 may
104 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)

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117 (b) The approved rates of any utility which ~~receives all or~~
118 ~~any portion of its utility service from a governmental authority~~
119 ~~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 ~~the rates charged~~
125 ~~by 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~~

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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~~
152 ~~water quality or wastewater quality testing performed by~~
153 ~~laboratories approved by the Department of Environmental~~
154 ~~Protection for that purpose.~~ The new rates, however, shall not
155 reflect the costs of any specified expense item ~~any required~~
156 ~~water quality or wastewater quality testing~~ already included in
157 a utility's rates. Specified expense items that are eligible for
158 automatic increase or decrease of a utility's rates include, but
159 are not limited to:

160 a. The rates charged by a governmental authority or other
161 water or wastewater utility regulated by the commission which
162 provides utility service to the utility.

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

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

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

170 e. The regulatory assessment fees imposed upon the utility
171 by the commission.

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

174 g. The fees charged for wastewater biosolids disposal.

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

178 i. Treatment plant operator and water distribution system
179 operator license fees required by the Department of
180 Environmental Protection or a local governmental authority.

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

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

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

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

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

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

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

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

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

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233 for costs incurred after the protest or appeal. By December 31,
234 2015, the commission must adopt rules to administer this
235 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, any
250 unamortized rate case expense for a prior rate case must be
251 discontinued. The unamortized portion of rate case expense for a
252 prior rate case must be removed from rates before the
253 implementation of an additional amortized rate case expense for
254 the most recent 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 pertains 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
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. Subsection (8) of section 367.171, Florida
304 Statutes, is amended to read:

305 367.171 Effectiveness of this chapter.-

306 (8) Each county that ~~which~~ is not subject to ~~excluded from~~
307 ~~the provisions of~~ this chapter shall regulate the rates of all
308 utilities in that county which would otherwise be subject to
309 regulation by the commission pursuant to s. 367.081(1), (2),
310 (3), and (6) and s. 367.165. The county shall not regulate the
311 rates or charges of any system or facility that ~~which~~ would
312 otherwise be exempt from commission regulation pursuant to s.
313 367.022(2). For this purpose the county or its agency shall
314 proceed as though the county or agency is the commission.

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