

**By** the Committees on Communications, Energy, and Public Utilities; and Environmental Preservation and Conservation; and 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 allow a utility to  
16 create a reserve fund upon the commission's own motion  
17 or upon the request of the utility; requiring the  
18 commission to adopt rules to govern the  
19 implementation, management, and use of the fund;  
20 establishing criteria for adjusted rates; specifying  
21 expense items that may be the basis for an automatic  
22 increase or decrease of a utility's rates; authorizing  
23 the commission to establish by rule additional  
24 specified expense items; requiring the commission to  
25 consider certain criteria and make findings and  
26 allocations among the ratepayers, shareholders,  
27 owners, or affiliates when determining reasonable rate  
28 case expenses; amending s. 367.0814, F.S.; authorizing  
29 the commission to award rate case expenses to recover  
30 attorney fees or fees of other outside consultants in

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31 certain circumstances; requiring the commission to  
32 adopt rules by a certain date; amending s. 367.0816,  
33 F.S.; prohibiting a utility from recovering certain  
34 expenses for more than one rate case at a time;  
35 amending s. 367.111, F.S.; authorizing the commission  
36 to review water quality and wastewater service upon  
37 its own motion or based on complaints of customers;  
38 amending s. 367.165, F.S.; requiring a county that  
39 regulates water or wastewater services to comply with  
40 the requirements for abandoned water and wastewater  
41 systems; amending s. 403.8532, F.S.; authorizing the  
42 Department of Environmental Protection to require or  
43 request that the Florida Water Pollution Control  
44 Financing Corporation make loans, grants, and deposits  
45 to for-profit, privately owned, or investor-owned  
46 water systems; deleting restrictions on such  
47 activities; providing an effective date.

48  
49 Be It Enacted by the Legislature of the State of Florida:

50  
51 Section 1. Section 159.8105, Florida Statutes, is created  
52 to read:

53 159.8105 Allocation of bonds for water and wastewater  
54 infrastructure projects.—The division shall review the  
55 allocation of private activity bonds to determine the  
56 availability of additional allocation and reallocation of bonds  
57 for water and wastewater infrastructure projects.

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

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60 212.08 Sales, rental, use, consumption, distribution, and  
61 storage tax; specified exemptions.—The sale at retail, the  
62 rental, the use, the consumption, the distribution, and the  
63 storage to be used or consumed in this state of the following  
64 are hereby specifically exempt from the tax imposed by this  
65 chapter.

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

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

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89 operate a water or wastewater system in this state and if the  
90 goods or services purchased or leased are used in this state.

91 Section 3. Present subsections (9) through (12) of section  
92 367.022, Florida Statutes, are redesignated as subsections (10)  
93 through (13), respectively, and a new subsection (9) is added to  
94 that section, to read:

95 367.022 Exemptions.—The following are not subject to  
96 regulation by the commission as a utility nor are they subject  
97 to the provisions of this chapter, except as expressly provided:

98 (9) Any person who resells water service to his or her  
99 tenants or to individually metered residents for a fee that does  
100 not exceed the actual purchase price of the water service plus  
101 the actual cost of meter reading and billing, not to exceed 9  
102 percent of the actual cost of water service.

103 Section 4. Paragraph (c) is added to subsection (2) of  
104 section 367.081, Florida Statutes, and paragraph (b) of  
105 subsection (4) and subsection (7) of that section are amended,  
106 to read:

107 367.081 Rates; procedure for fixing and changing.—

108 (2)

109 (c) In establishing rates for a utility, upon its own  
110 motion or upon the request of a utility, the commission may  
111 authorize a utility to create a utility reserve fund for  
112 infrastructure repair and replacement for a utility for existing  
113 distribution and collection infrastructure that is nearing the  
114 end of its useful life or is detrimental to water quality or  
115 reliability of service, to be funded by a portion of the rates  
116 charged by the utility, by a secured escrow account, or through  
117 a letter of credit. The commission shall adopt rules to govern

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118 the implementation, management, and use of the fund, including,  
119 but not limited to, rules related to expenses for which the fund  
120 may be used, segregation of reserve account funds, requirements  
121 for a capital improvement plan, and requirements for commission  
122 authorization before disbursements are made from the fund.

123 (4)

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

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

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

167 a. The rates charged by a governmental authority or other  
168 water or wastewater utility regulated by the commission which  
169 provides utility service to the utility.

170 b. The rates or fees that the utility is charged for  
171 electric power.

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

174 d. The fees charged by the Department of Environmental  
175 Protection in connection with the National Pollutant Discharge

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176 Elimination System Program.

177 e. The regulatory assessment fees imposed upon the utility  
178 by the commission.

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

181 g. The fees charged for wastewater biosolids disposal.

182 h. Costs incurred for any tank inspection required by the  
183 Department of Environmental Protection or a local governmental  
184 authority.

185 i. Treatment plant operator and water distribution system  
186 operator license fees required by the Department of  
187 Environmental Protection or a local governmental authority.

188 j. Water or wastewater operating permit fees charged by the  
189 Department of Environmental Protection or a local governmental  
190 authority.

191 k. Consumptive or water use permit fees charged by a water  
192 management district.

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

200 3. The commission may establish by rule additional specific  
201 expense items that are outside the control of the utility and  
202 have been imposed upon the utility by a federal, state, or local  
203 law, rule, order, or notice. If the commission establishes such  
204 a rule, the commission shall review the rule at least once every

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205 5 years and determine whether each expense item should continue  
206 to be cause for an automatic increase or decrease and whether  
207 additional items should be included.

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

211 (7) The commission shall determine the reasonableness of  
212 rate case expenses and shall disallow all rate case expenses  
213 determined to be unreasonable. No rate case expense determined  
214 to be unreasonable shall be paid by a consumer.

215 (a) In determining the reasonable level of rate case  
216 expense, the commission shall consider the following criteria  
217 and disallow a rate case expense based upon:

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

220 2. Whether the customers have received a material benefit  
221 as a result of the rate case.

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

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

225 5. The extent to which, at the time of the initial filing,  
226 the utility filed complete documentation as required by  
227 commission rule, including, but not limited to, minimum filing  
228 requirements.

229 6. Whether the utility's rate case filing seeks  
230 preferential benefits to shareholders, owners, or nonregulated  
231 affiliates.

232 7. The proportion of any rate increase approved by the  
233 commission as compared to the amount initially requested by the

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234 utility.

235 8. The amount of overall rate case expense incurred and  
236 requested as compared to the amount of rate increase approved by  
237 the commission.

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

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

240 (b) The commission shall make specific findings of fact,  
241 supported by competent, substantial evidence, for each criterion  
242 and the extent to which each criterion benefits the customer.  
243 The commission may allocate the benefits between the customers  
244 and the shareholders, owners, or affiliates accordingly.

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

247 367.0814 Staff assistance in changing rates and charges;  
248 interim rates.—

249 (3) The provisions of s. 367.081(1), (2)(a), and (3) shall  
250 apply in determining the utility's rates and charges. However,  
251 the commission may not award rate case expenses to recover  
252 attorney fees or fees of other outside consultants who are  
253 engaged for the purpose of preparing or filing the case if a  
254 utility receives staff assistance in changing rates and charges  
255 pursuant to this section, unless the Office of Public Counsel or  
256 interested parties have intervened. The commission may award  
257 rate case expenses for attorney fees or fees of other outside  
258 consultants if such fees are incurred for the purpose of  
259 providing consulting or legal services to the utility after the  
260 initial staff report is made available to customers and the  
261 utility. If there is a protest or an appeal by a party other  
262 than the utility, the commission may award rate case expenses to

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263 the utility for attorney fees or fees of other outside  
264 consultants for costs incurred after the protest or appeal. By  
265 December 31, 2016, the commission must adopt rules to administer  
266 this subsection.

267 Section 6. Section 367.0816, Florida Statutes, is amended  
268 to read:

269 367.0816 Recovery of rate case expenses.—

270 (1) The amount of rate case expense determined by the  
271 commission pursuant to ~~the provisions of~~ this chapter to be  
272 recovered through a public utilities rate shall be apportioned  
273 for recovery over a period of 4 years. At the conclusion of the  
274 recovery period, the rate of the public utility shall be reduced  
275 immediately by the amount of rate case expense previously  
276 included in rates.

277 (2) A utility may not recover the 4-year amortized rate  
278 case expense for more than one rate case at any given time. If  
279 the commission approves and a utility implements a rate change  
280 from a subsequent rate case pursuant to this section, any  
281 unamortized rate case expense for a prior rate case must be  
282 discontinued. The unamortized portion of rate case expense for a  
283 prior rate case must be removed from rates before the  
284 implementation of an additional amortized rate case expense for  
285 the most recent rate proceeding.

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

288 367.111 Service.—

289 (3) The commission may, on its own motion or based on  
290 complaints of customers of a water utility subject to its  
291 jurisdiction, review water quality as it pertains to secondary

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292 drinking water standards established by the Department of  
293 Environmental Protection. The commission may, on its own motion  
294 or based on complaints of customers of a wastewater utility  
295 subject to its jurisdiction, review wastewater service as it  
296 pertains to odor, noise, aerosol drift, or lighting.

297 Section 8. Section 367.165, Florida Statutes, is amended to  
298 read:

299 367.165 Abandonment.—It is the intent of the Legislature  
300 that water or wastewater service to the customers of a utility  
301 not be interrupted by the abandonment or placement into  
302 receivership of the utility. Notwithstanding s. 367.171, this  
303 section applies to each county. To that end:

304 (1) A ~~No~~ person, lessee, trustee, or receiver owning,  
305 operating, managing, or controlling a utility may not ~~shall~~  
306 abandon the utility without giving 60 days' notice to the county  
307 or counties in which the utility is located and to the  
308 commission. Anyone who violates ~~the provisions of this~~  
309 subsection is guilty of a misdemeanor of the first degree,  
310 punishable as provided in s. 775.082 or s. 775.083. Each day of  
311 such abandonment constitutes a separate offense. In addition,  
312 such act is a violation of this chapter, and the commission may  
313 impose upon the utility a penalty for each such offense of not  
314 more than \$5,000 or may amend, suspend, or revoke its  
315 certificate of authorization; each day of such abandonment  
316 without prior notice constitutes a separate offense.

317 (2) After receiving such notice, the county, or counties  
318 acting jointly if more than one county is affected, shall  
319 petition the circuit court of the judicial circuit in which such  
320 utility is domiciled to appoint a receiver, which may be the

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321 governing body of a political subdivision or any other person  
322 deemed appropriate. The receiver shall operate the utility from  
323 the date of abandonment until such time as the receiver disposes  
324 of the property of the utility in a manner designed to continue  
325 the efficient and effective operation of utility service.

326 (3) The notification to the commission under subsection (1)  
327 is sufficient cause for revocation, suspension, or amendment of  
328 the certificate of authorization of the utility as of the date  
329 of abandonment. The receiver operating such utility shall be  
330 considered to hold a temporary authorization from the  
331 commission, and the approved rates of the utility shall be  
332 deemed to be the interim rates of the receiver until modified by  
333 the commission.

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

336 403.8532 Drinking water state revolving loan fund; use;  
337 rules.-

338 (3) The department may make, or request that the  
339 corporation make, loans, grants, and deposits to community water  
340 systems; for-profit, privately owned, or investor-owned water  
341 systems; ~~nonprofit, transient, noncommunity water systems;~~ and  
342 nonprofit, nontransient, noncommunity water systems to assist  
343 them in planning, designing, and constructing public water  
344 systems, ~~unless such public water systems are for profit~~  
345 ~~privately owned or investor-owned systems that regularly serve~~  
346 ~~1,500 service connections or more within a single certified or~~  
347 ~~franchised area. However, a for-profit privately owned or~~  
348 ~~investor-owned public water system that regularly serves 1,500~~  
349 ~~service connections or more within a single certified or~~

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350 ~~franchised area may qualify for a loan only if the proposed~~  
351 ~~project will result in the consolidation of two or more public~~  
352 ~~water systems.~~ The department may provide loan guarantees,  
353 purchase loan insurance, and refinance local debt through the  
354 issue of new loans for projects approved by the department.  
355 Public water systems may borrow funds made available pursuant to  
356 this section and may pledge any revenues or other adequate  
357 security available to them to repay any funds borrowed.

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

361 1. At least 15 percent for qualifying small public water  
362 systems.

363 2. Up to 15 percent for qualifying financially  
364 disadvantaged communities.

365 (b) If an insufficient number of the projects for which  
366 funds are reserved under this subsection have been submitted to  
367 the department at the time the funding priority list authorized  
368 under this section is adopted, the reservation of these funds no  
369 longer applies. The department may award the unreserved funds as  
370 otherwise provided in this section.

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