

By the Committees on Appropriations; 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. 367.022, F.S.; exempting from
9 regulation by the Florida Public Service Commission a
10 person who resells water service to certain tenants or
11 residents up to a specified percentage or cost;
12 amending s. 367.081, F.S.; authorizing the commission
13 to allow a utility to create a reserve fund upon the
14 commission's own motion or upon the request of the
15 utility; requiring the commission to adopt rules to
16 govern the implementation, management, and use of the
17 fund; establishing criteria for adjusted rates;
18 specifying expense items that may be the basis for an
19 automatic increase or decrease of a utility's rates;
20 authorizing the commission to establish by rule
21 additional specified expense items; requiring the
22 commission to consider certain criteria, when
23 specifically raised in writing by certain parties;
24 specifying standards for evidentiary proceeding
25 involving challenges to such criteria; authorizing the
26 commission to allocate benefits between the customers,
27 shareholders, owners, or affiliates and to disallow
28 rate case expense under certain circumstances;
29 amending s. 367.0814, F.S.; prohibiting the commission
30 from awarding rate case expenses to recover attorney

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31 fees or fees of other outside consultants in certain
32 circumstances; providing exceptions; requiring the
33 commission to propose rules by a certain date;
34 amending s. 367.0816, F.S.; providing an exception to
35 the provision requiring rate case expense recovery to
36 be apportioned over 4 years; prohibiting a utility
37 from earning a return on the unamortized balance of
38 rate case expense; excluding such expenses from rate
39 bases; amending s. 367.111, F.S.; authorizing the
40 commission to review water quality and wastewater
41 service upon its own motion or based on complaints of
42 customers; amending s. 367.165, F.S.; requiring a
43 county that regulates water or wastewater services to
44 comply with the requirements for abandoned water and
45 wastewater systems; amending s. 403.8532, F.S.;

46 authorizing the Department of Environmental Protection
47 to require or request that the Florida Water Pollution
48 Control Financing Corporation make loans, grants, and
49 deposits to for-profit, privately owned, or investor-
50 owned water systems; deleting restrictions on such
51 activities; providing an effective date.

52
53 Be It Enacted by the Legislature of the State of Florida:

54
55 Section 1. Section 159.8105, Florida Statutes, is created
56 to read:

57 159.8105 Allocation of bonds for water and wastewater
58 infrastructure projects.—The division shall review the
59 allocation of private activity bonds to determine the

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60 availability of additional allocation and reallocation of bonds
61 for water and wastewater infrastructure projects.

62 Section 2. Present subsections (9) through (12) of section
63 367.022, Florida Statutes, are redesignated as subsections (10)
64 through (13), respectively, and a new subsection (9) is added to
65 that section, to read:

66 367.022 Exemptions.—The following are not subject to
67 regulation by the commission as a utility nor are they subject
68 to the provisions of this chapter, except as expressly provided:

69 (9) Any person who resells water service to his or her
70 tenants or to individually metered residents for a fee that does
71 not exceed the actual purchase price of the water service plus
72 the actual cost of meter reading and billing, not to exceed 9
73 percent of the actual cost of water service.

74 Section 3. Paragraph (c) is added to subsection (2) of
75 section 367.081, Florida Statutes, and paragraph (b) of
76 subsection (4) and subsection (7) of that section are amended,
77 to read:

78 367.081 Rates; procedure for fixing and changing.—

79 (2)

80 (c) In establishing rates for a utility, upon its own
81 motion or upon the request of a utility, the commission may
82 authorize a utility to create a utility reserve fund for
83 infrastructure repair and replacement for a utility for existing
84 distribution and collection infrastructure that is nearing the
85 end of its useful life or is detrimental to water quality or
86 reliability of service, to be funded by a portion of the rates
87 charged by the utility, by a secured escrow account, or through
88 a letter of credit. The commission shall adopt rules to govern

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89 the implementation, management, and use of the fund, including,
90 but not limited to, rules related to expenses for which the fund
91 may be used, segregation of reserve account funds, requirements
92 for a capital improvement plan, and requirements for commission
93 authorization before disbursements are made from the fund.

94 (4)

95 (b) ~~The approved rates of any utility which receives all or~~
96 ~~any portion of its utility service from a governmental authority~~
97 ~~or from a water or wastewater utility regulated by the~~
98 ~~commission and which redistributes that service to its utility~~
99 ~~customers shall be automatically increased or decreased without~~
100 ~~hearing, upon verified notice to the commission 45 days before~~
101 ~~prior to its implementation of the increase or decrease that the~~
102 ~~utility's costs for any specified expense item the rates charged~~
103 ~~by the governmental authority or other utility have changed. The~~
104 ~~approved rates of any utility which is subject to an increase or~~
105 ~~decrease in the rates or fees that it is charged for electric~~
106 ~~power, the amount of ad valorem taxes assessed against its used~~
107 ~~and useful property, the fees charged by the Department of~~
108 ~~Environmental Protection in connection with the National~~
109 ~~Pollutant Discharge Elimination System Program, or the~~
110 ~~regulatory assessment fees imposed upon it by the commission~~
111 ~~shall be increased or decreased by the utility, without action~~
112 ~~by the commission, upon verified notice to the commission 45~~
113 ~~days prior to its implementation of the increase or decrease~~
114 ~~that the rates charged by the supplier of the electric power or~~
115 ~~the taxes imposed by the governmental authority, or the~~
116 ~~regulatory assessment fees imposed upon it by the commission~~
117 ~~have changed. The new rates authorized shall reflect the amount~~

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118 ~~of the change of the ad valorem taxes or rates imposed upon the~~
119 ~~utility by the governmental authority, other utility, or~~
120 ~~supplier of electric power, or the regulatory assessment fees~~
121 ~~imposed upon it by the commission. The approved rates of any~~
122 ~~utility shall be automatically increased, without hearing, upon~~
123 ~~verified notice to the commission 45 days prior to~~
124 ~~implementation of the increase that costs have been incurred for~~
125 ~~water quality or wastewater quality testing required by the~~
126 ~~Department of Environmental Protection.~~

127 1. The new rates authorized shall reflect, on an amortized
128 or annual basis, as appropriate, the cost of, or the amount of
129 change in the cost of, the specified expense item, ~~required~~
130 ~~water quality or wastewater quality testing performed by~~
131 ~~laboratories approved by the Department of Environmental~~
132 ~~Protection for that purpose. The new rates, however, shall not~~
133 ~~reflect the costs of any specified expense item any required~~
134 ~~water quality or wastewater quality testing already included in~~
135 ~~a utility's rates. Specified expense items that are eligible for~~
136 ~~automatic increase or decrease of a utility's rates include, but~~
137 ~~are not limited to:~~

138 a. The rates charged by a governmental authority or other
139 water or wastewater utility regulated by the commission which
140 provides utility service to the utility.

141 b. The rates or fees that the utility is charged for
142 electric power.

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

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

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147 Elimination System Program.

148 e. The regulatory assessment fees imposed upon the utility
149 by the commission.

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

152 g. The fees charged for wastewater biosolids disposal.

153 h. Costs incurred for any tank inspection required by the
154 Department of Environmental Protection or a local governmental
155 authority.

156 i. Treatment plant operator and water distribution system
157 operator license fees required by the Department of
158 Environmental Protection or a local governmental authority.

159 j. Water or wastewater operating permit fees charged by the
160 Department of Environmental Protection or a local governmental
161 authority.

162 k. Consumptive or water use permit fees charged by a water
163 management district.

164 2. A utility may not use this procedure to increase its
165 rates as a result of an increase in a specific expense item
166 which occurred ~~water quality or wastewater quality testing or an~~
167 ~~increase in the cost of purchased water services, sewer~~
168 ~~services, or electric power or in assessed ad valorem taxes,~~
169 ~~which increase was initiated~~ more than 12 months before the
170 filing by the utility.

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

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176 5 years and determine whether each expense item should continue
177 to be cause for an automatic increase or decrease and whether
178 additional items should be included.

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

182 (7) The commission shall determine the reasonableness of
183 rate case expenses and shall disallow all rate case expenses
184 determined to be unreasonable. No rate case expense determined
185 to be unreasonable shall be paid by a consumer.

186 (a) In determining the reasonable level of rate case
187 expense, the commission shall consider the following criteria as
188 a basis for disallowing such rate case expense when the criteria
189 are specifically raised in writing by the Public Counsel, an
190 intervenor, or commission staff:

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

193 2. Whether the customers have received a material benefit
194 as a result of the rate case.

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

196 4. The extent to which, at the time of the initial filing,
197 the utility filed complete documentation as required by
198 commission rule, including, but not limited to, minimum filing
199 requirements.

200 5. Whether the utility's rate case filing seeks
201 preferential benefits to shareholders, owners, or nonregulated
202 affiliates.

203 6. The proportion of any rate increase approved by the
204 commission as compared to the amount initially requested by the

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205 utility.

206 7. The amount of overall rate case expense incurred and
207 requested as compared to the amount of rate increase approved by
208 the commission.

209 8. The utility management's culpability in causing any
210 deficiencies in the quality of service provided by the utility.

211 9. and Such other criteria as the commission ~~it~~ may
212 establish by rule.

213 (b) If any of the criteria specified under paragraph (a)
214 are specifically contested in an evidentiary proceeding, the
215 commission shall make specific findings of fact, supported by
216 competent, substantial evidence, for each criterion and the
217 extent to which each criterion benefits the customer. The
218 commission may allocate the benefits between the customers and
219 the shareholders, owners, or affiliates accordingly and disallow
220 rate case expense in accordance with the specific findings of
221 fact.

222 Section 4. Subsection (3) of section 367.0814, Florida
223 Statutes, is amended to read:

224 367.0814 Staff assistance in changing rates and charges;
225 interim rates.—

226 (3) The provisions of s. 367.081(1), (2)(a), and (3) shall
227 apply in determining the utility's rates and charges. However,
228 the commission may not award rate case expenses to recover
229 attorney fees or fees of other outside consultants who are
230 engaged for the purpose of preparing or filing the case if a
231 utility receives staff assistance in changing rates and charges
232 pursuant to this section, unless the Office of Public Counsel or
233 interested parties have intervened. The commission may award

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234 rate case expenses for attorney fees or fees of other outside
235 consultants if such fees are incurred for the purpose of
236 providing consulting or legal services to the utility after the
237 initial staff report is made available to customers and the
238 utility. If there is a protest or an appeal by a party other
239 than the utility, the commission may award rate case expenses to
240 the utility for attorney fees or fees of other outside
241 consultants for costs incurred after the protest or appeal. By
242 December 31, 2016, the commission shall propose rules to
243 administer this subsection.

244 Section 5. Section 367.0816, Florida Statutes, is amended
245 to read:

246 367.0816 Recovery of rate case expenses.—

247 (1) The amount of rate case expense determined by the
248 commission pursuant to the provisions of this chapter to be
249 recovered through a public utility's ~~utilities~~ rate shall be
250 apportioned for recovery over a period of 4 years, unless a
251 longer period can be justified and is in the public interest. At
252 the conclusion of the recovery period, the rate of the public
253 utility shall be reduced immediately by the amount of rate case
254 expense previously included in the rates.

255 (2) A utility may not earn a return on the unamortized
256 balance of rate case expense. Any unamortized balance of rate
257 case expense shall be excluded in calculating the utility rate
258 base.

259 Section 6. Subsection (3) is added to section 367.111,
260 Florida Statutes, to read:

261 367.111 Service.—

262 (3) The commission may, on its own motion or based on

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263 complaints of customers of a water utility subject to its
264 jurisdiction, review water quality as it pertains to secondary
265 drinking water standards established by the Department of
266 Environmental Protection. The commission may, on its own motion
267 or based on complaints of customers of a wastewater utility
268 subject to its jurisdiction, review wastewater service as it
269 pertains to odor, noise, aerosol drift, or lighting.

270 Section 7. Section 367.165, Florida Statutes, is amended to
271 read:

272 367.165 Abandonment.—It is the intent of the Legislature
273 that water or wastewater service to the customers of a utility
274 not be interrupted by the abandonment or placement into
275 receivership of the utility. Notwithstanding s. 367.171, this
276 section applies to each county. To that end:

277 (1) A ~~No~~ person, lessee, trustee, or receiver owning,
278 operating, managing, or controlling a utility may not ~~shall~~
279 abandon the utility without giving 60 days' notice to the county
280 or counties in which the utility is located and to the
281 commission. Anyone who violates ~~the provisions of~~ this
282 subsection is guilty of a misdemeanor of the first degree,
283 punishable as provided in s. 775.082 or s. 775.083. Each day of
284 such abandonment constitutes a separate offense. In addition,
285 such act is a violation of this chapter, and the commission may
286 impose upon the utility a penalty for each such offense of not
287 more than \$5,000 or may amend, suspend, or revoke its
288 certificate of authorization; each day of such abandonment
289 without prior notice constitutes a separate offense.

290 (2) After receiving such notice, the county, or counties
291 acting jointly if more than one county is affected, shall

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292 petition the circuit court of the judicial circuit in which such
293 utility is domiciled to appoint a receiver, which may be the
294 governing body of a political subdivision or any other person
295 deemed appropriate. The receiver shall operate the utility from
296 the date of abandonment until such time as the receiver disposes
297 of the property of the utility in a manner designed to continue
298 the efficient and effective operation of utility service.

299 (3) The notification to the commission under subsection (1)
300 is sufficient cause for revocation, suspension, or amendment of
301 the certificate of authorization of the utility as of the date
302 of abandonment. The receiver operating such utility shall be
303 considered to hold a temporary authorization from the
304 commission, and the approved rates of the utility shall be
305 deemed to be the interim rates of the receiver until modified by
306 the commission.

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

309 403.8532 Drinking water state revolving loan fund; use;
310 rules.—

311 (3) The department may make, or request that the
312 corporation make, loans, grants, and deposits to community water
313 systems; for-profit, privately owned, or investor-owned water
314 systems;~~nonprofit, transient, noncommunity water systems;~~ and
315 nonprofit, nontransient, noncommunity water systems to assist
316 them in planning, designing, and constructing public water
317 systems, ~~unless such public water systems are for-profit~~
318 ~~privately owned or investor-owned systems that regularly serve~~
319 ~~1,500 service connections or more within a single certified or~~
320 ~~franchised area. However, a for-profit privately owned or~~

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321 ~~investor owned public water system that regularly serves 1,500~~
322 ~~service connections or more within a single certified or~~
323 ~~franchised area may qualify for a loan only if the proposed~~
324 ~~project will result in the consolidation of two or more public~~
325 ~~water systems.~~ The department may provide loan guarantees,
326 purchase loan insurance, and refinance local debt through the
327 issue of new loans for projects approved by the department.
328 Public water systems may borrow funds made available pursuant to
329 this section and may pledge any revenues or other adequate
330 security available to them to repay any funds borrowed.

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

334 1. At least 15 percent for qualifying small public water
335 systems.

336 2. Up to 15 percent for qualifying financially
337 disadvantaged communities.

338 (b) If an insufficient number of the projects for which
339 funds are reserved under this subsection have been submitted to
340 the department at the time the funding priority list authorized
341 under this section is adopted, the reservation of these funds no
342 longer applies. The department may award the unreserved funds as
343 otherwise provided in this section.

344 Section 9. This act shall take effect July 1, 2016.