

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 for certain
6 purposes; amending s. 212.08, F.S.; exempting from the
7 sales and use tax the sales and leases to certain
8 investor-owned water and wastewater utilities;
9 amending s. 367.022, F.S.; exempting from regulation
10 as a utility by the Florida Public Service Commission
11 a person who resells water service to certain tenants
12 or residents up to a specified percentage of cost of
13 providing service; amending s. 367.081, F.S.;
14 authorizing the commission to create a utility reserve
15 fund for certain purposes; requiring the commission to
16 adopt rules to govern the implementation and
17 management of the fund; expanding the categories of
18 expenses eligible for automatic increase or decrease
19 of a utility's rates under certain conditions;
20 establishing criteria for adjusted rates; specifying
21 expense items that may be automatically increased or
22 decreased; authorizing the commission to establish, by
23 rule, additional expense items for which utilities may
24 automatically increase or decrease their rates;
25 specifying that a utility may not recover more than 50
26 percent of certain rate case expenses; amending s.

27 367.0814, F.S.; prohibiting the commission from
28 awarding rate case expense to recover attorney fees or
29 fees of other outside consultants in certain
30 circumstances; requiring the commission to adopt
31 rules; amending s. 367.0816, F.S.; prohibiting a
32 utility from recovering certain rate case expenses for
33 more than one rate case at a time; amending s.
34 367.111, F.S.; authorizing the commission, on its own
35 motion or based on customer complaints, to review
36 water quality and wastewater service; amending s.
37 403.8532, F.S.; expanding the list of utilities to
38 include for-profit, privately owned, and investor-
39 owned utilities that are eligible, to receive loan,
40 grants, or deposits from the Water Pollution Control
41 Financing Corporation; amending ss. 367.084 and
42 367.171, F.S.; making technical changes; providing an
43 effective date.

44
45 Be It Enacted by the Legislature of the State of Florida:

46
47 Section 1. Section 159.8105, Florida Statutes, is created
48 to read:

49 159.8105 Allocation of bonds for water and wastewater
50 infrastructure projects.—The division shall review the
51 allocation of private activity bonds to determine the
52 availability of additional allocation or reallocation of bonds

53 for water and wastewater infrastructure projects.

54 Section 2. Paragraph (nnn) is added to subsection (7) of
55 section 212.08, Florida Statutes, to read:

56 212.08 Sales, rental, use, consumption, distribution, and
57 storage tax; specified exemptions.—The sale at retail, the
58 rental, the use, the consumption, the distribution, and the
59 storage to be used or consumed in this state of the following
60 are hereby specifically exempt from the tax imposed by this
61 chapter.

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

79 | this subsection.

80 | (nnn) Investor-owned water and wastewater utilities.—Sales
81 | or leases to an investor-owned water or wastewater utility owned
82 | or operated by a Florida corporation are exempt from the tax
83 | imposed by this chapter if the sole or primary function of the
84 | corporation is to construct, maintain, or operate a water or
85 | wastewater system in this state and if the goods or services
86 | purchased or leased are used in this state and used for the
87 | water or wastewater utility.

88 | Section 3. Subsections (9) through (12) of section
89 | 367.022, Florida Statutes, are renumbered as subsections (10)
90 | through (13), respectively, and a new subsection (9) is added to
91 | that section, to read:

92 | 367.022 Exemptions.—The following are not subject to
93 | regulation by the commission as a utility nor are they subject
94 | to the provisions of this chapter, except as expressly provided:

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

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

104 | 367.081 Rates; procedure for fixing and changing.—

105 (2)

106 (c) When establishing a utility's rates, the commission
107 may create a utility reserve fund for that utility to help
108 repair and replace any of its existing distribution and
109 collection infrastructure that is nearing the end of its useful
110 life or negatively impacting water quality or reliability of
111 service, to be funded by a portion of the rates charged by the
112 utility, by a secured escrow account, or through a letter of
113 credit. The commission shall adopt rules to govern the
114 implementation, management, and use of the fund, including, but
115 not limited to, rules related to expenses for which the fund may
116 be used, segregation of reserve account funds, requirements for
117 a capital improvement plan, and requirements for commission
118 authorization before disbursements are made from the fund.

119 (4)

120 (b) ~~The approved rates of any utility which receives all~~
121 ~~or any portion of its utility service from a governmental~~
122 ~~authority or from a water or wastewater utility regulated by the~~
123 ~~commission and which redistributes that service to its utility~~
124 ~~customers shall be automatically increased or decreased without~~
125 ~~hearing, upon verified notice to the commission 45 days before~~
126 ~~prior to its implementation of the increase or decrease that its~~
127 ~~costs for a specified expense item have changed the rates~~
128 ~~charged by the governmental authority or other utility have~~
129 ~~changed. The approved rates of any utility which is subject to~~
130 ~~an increase or decrease in the rates or fees that it is charged~~

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

152 1. The new rates authorized shall reflect, on an amortized
153 or annual basis, as appropriate, the cost of, or the amount of
154 change in the cost of, the specified expense item, ~~required~~
155 ~~water quality or wastewater quality testing performed by~~
156 ~~laboratories approved by the Department of Environmental~~

157 ~~Protection for that purpose.~~ The new rates, however, shall not
158 reflect the costs of a specified expense item ~~any required water~~
159 ~~quality or wastewater quality testing~~ already included in a
160 utility's rates. Specified expense items that are eligible for
161 automatic increase or decrease of a utility's rates include, but
162 are not limited to:

163 a. The rates charged by a governmental authority or other
164 water or wastewater utility regulated by the commission which
165 provides utility service to the utility.

166 b. The rates or fees that the utility is charged for
167 electric power.

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

170 d. The fees charged by the Department of Environmental
171 Protection in connection with the National Pollutant Discharge
172 Elimination System Program.

173 e. The regulatory assessment fees imposed upon the utility
174 by the commission.

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

177 g. The fees charged for wastewater biosolids disposal.

178 h. Costs incurred for tank inspection required by the
179 Department of Environmental Protection or a local governmental
180 authority.

181 i. Operator and distribution license fees required by the
182 Department of Environmental Protection or a local governmental

183 authority.

184 j. Water or wastewater operating permit fees charged by
185 the Department of Environmental Protection or a local
186 governmental authority.

187 k. Consumptive or water use permit fees charged by a water
188 management district.

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

196 3. The commission may establish by rule additional
197 specific expense items that are outside the control of the
198 utility but have been imposed upon the utility by a federal,
199 state, or local law, rule, order, or notice. If the commission
200 establishes such rule, the commission shall, at least once every
201 5 years, review the rule and determine if each expense item
202 should continue to be cause for an automatic increase or
203 decrease and whether additional items should be included.

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

207 (7) The commission shall determine the reasonableness of
208 rate case expenses and shall disallow all rate case expenses

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

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

219 367.0814 Staff assistance in changing rates and charges;
220 interim rates.—

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

235 consultant fees for costs incurred after the protest or appeal.
236 By December 31, 2015, the commission must adopt rules to
237 administer this subsection.

238 Section 6. Section 367.0816, Florida Statutes, is amended
239 to read:

240 367.0816 Recovery of rate case expenses.—

241 (1) The amount of rate case expense determined by the
242 commission pursuant to the provisions of this chapter to be
243 recovered through a public utilities rate shall be apportioned
244 for recovery over a period of 4 years. At the conclusion of the
245 recovery period, the rate of the public utility shall be reduced
246 immediately by the amount of rate case expense previously
247 included in rates.

248 (2) A utility may not recover the 4-year amortized rate
249 case expense for more than one rate case at any given time. If
250 the commission approves and a utility implements a rate change
251 from a subsequent rate case pursuant to this section, any
252 unamortized rate case expense for a prior rate case shall be
253 discontinued. The unamortized portion of rate case expense for a
254 prior case must be removed from rates before the implementation
255 of an additional amortized rate case expense for the most recent
256 rate proceeding.

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

259 367.111 Service.—

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

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

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

270 403.8532 Drinking water state revolving loan fund; use;
271 rules.—

272 (3) The department may make, or request that the
273 corporation make, loans, grants, and deposits to community water
274 systems; for-profit, privately owned, or investor-owned water
275 systems; ~~nonprofit,~~ transient, ~~noncommunity water systems;~~ and
276 ~~nonprofit,~~ nontransient, ~~noncommunity water systems~~ to assist
277 them in planning, designing, and constructing public water
278 systems, ~~unless such public water systems are for-profit~~
279 ~~privately owned or investor-owned systems that regularly serve~~
280 ~~1,500 service connections or more within a single certified or~~
281 ~~franchised area. However, a for-profit privately owned or~~
282 ~~investor-owned public water system that regularly serves 1,500~~
283 ~~service connections or more within a single certified or~~
284 ~~franchised area may qualify for a loan only if the proposed~~
285 ~~project will result in the consolidation of two or more public~~
286 ~~water systems.~~ The department may provide loan guarantees,

287 purchase loan insurance, and refinance local debt through the
 288 issue of new loans for projects approved by the department.
 289 Public water systems may borrow funds made available pursuant to
 290 this section and may pledge any revenues or other adequate
 291 security available to them to repay any funds borrowed.

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

295 1. At least 15 percent for qualifying small public water
 296 systems.

297 2. Up to 15 percent for qualifying financially
 298 disadvantaged communities.

299 (b) If an insufficient number of the projects for which
 300 funds are reserved under this subsection have been submitted to
 301 the department at the time the funding priority list authorized
 302 under this section is adopted, the reservation of these funds no
 303 longer applies. The department may award the unreserved funds as
 304 otherwise provided in this section.

305 Section 9. Section 367.084, Florida Statutes, is amended
 306 to read:

307 367.084 Rate adjustment orders.—An ~~Any~~ order issued by the
 308 commission adjusting general increases or reductions of the
 309 rates and charges of a ~~any~~ utility or regulated company must be
 310 reduced to writing, including any dissenting or concurring
 311 opinions, within 20 days after the official vote of the
 312 commission. Within such 20-day period, the commission shall also

313 mail a copy to the clerk of the circuit court of each county in
 314 which customers of the utility or regulated company are served
 315 who are affected by the rate adjustment, which copy must be kept
 316 on file and made available to the public. The commission shall
 317 notify all parties of record in the proceeding of the date of
 318 such mailing. Such an order is not considered rendered for
 319 purposes of appeal, rehearing, or judicial review until the date
 320 the copies are mailed as required by this section. This
 321 provision does not delay the effective date of the order. Such
 322 an order is considered rendered on the date of the official vote
 323 for the purposes of s. 367.081(7) ~~s. 367.081(6)~~.

324 Section 10. Subsection (8) of section 367.171, Florida
 325 Statutes, is amended to read:

326 367.171 Effectiveness of this chapter.—

327 (8) Each county that ~~which~~ is not subject to ~~excluded from~~
 328 ~~the provisions of~~ this chapter shall regulate the rates of all
 329 utilities in that county which would otherwise be subject to
 330 regulation by the commission pursuant to s. 367.081(1), (2),
 331 (3), and (7) and s. 367.165 ~~(6)~~. The county shall not regulate
 332 the rates or charges of any system or facility that ~~which~~ would
 333 otherwise be exempt from commission regulation pursuant to s.
 334 367.022(2). For this purpose the county or its agency shall
 335 proceed as though the county or agency is the commission.

336 Section 11. This act shall take effect July 1, 2015.