



ENROLLED

CS/CS/CS/HB 491, Engrossed 2

2016 Legislature

1
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.; providing that the
13 commission may authorize a utility to create a utility
14 reserve fund under certain circumstances; requiring
15 the commission to adopt rules to govern the
16 implementation, management, and use of the fund;
17 establishing criteria for adjusted rates; specifying
18 expense items that may be the basis for an automatic
19 increase or decrease of a utility's rates; authorizing
20 the commission to establish by rule additional
21 specified expense items; specifying the time period
22 over which rate case expenses may be apportioned if a
23 public utility is authorized to recover those expenses
24 through its rates; prohibiting a utility from earning
25 a return on the unamortized balance of the rate case
26 expense; amending s. 367.0814, F.S.; authorizing the



ENROLLED

CS/CS/CS/HB 491, Engrossed 2

2016 Legislature

27 | commission to award rate case expenses to recover
 28 | attorney fees or fees of other outside consultants in
 29 | certain circumstances; requiring the commission to
 30 | propose rules by a certain date; repealing s.
 31 | 367.0816, F.S., relating to the recovery of rate case
 32 | expenses; amending s. 367.111, F.S.; authorizing the
 33 | commission to review water quality and wastewater
 34 | service under certain circumstances; amending s.
 35 | 367.165, F.S.; requiring counties to comply with
 36 | requirements for abandoned water and wastewater
 37 | systems; amending s. 403.8532, F.S.; authorizing the
 38 | Department of Environmental Protection to require or
 39 | request that the Florida Water Pollution Control
 40 | Financing Corporation make loans, grants, and deposits
 41 | to for-profit, privately owned, or investor-owned
 42 | water systems; removing current restrictions on such
 43 | activities; providing an 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 and reallocation of bonds



ENROLLED

CS/CS/CS/HB 491, Engrossed 2

2016 Legislature

53 | for water and wastewater infrastructure projects.

54 | Section 2. Subsections (9) through (12) of section
55 | 367.022, Florida Statutes, are renumbered as subsections (10)
56 | through (13), respectively, and a new subsection (9) is added to
57 | that section to read:

58 | 367.022 Exemptions.—The following are not subject to
59 | regulation by the commission as a utility nor are they subject
60 | to the provisions of this chapter, except as expressly provided:

61 | (9) Any person who resells water service to his or her
62 | tenants or to individually metered residents for a fee that does
63 | not exceed the actual purchase price of the water plus the
64 | actual cost of meter reading and billing, not to exceed 9
65 | percent of the actual cost of service.

66 | Section 3. Paragraph (c) is added to subsection (2) of
67 | section 367.081, Florida Statutes, paragraph (b) of subsection
68 | (4) is amended, subsection (8) is renumbered as subsection (10),
69 | and new subsections (8) and (9) are added to that section, to
70 | read:

71 | 367.081 Rates; procedure for fixing and changing.—

72 | (2)

73 | (c) In establishing rates for a utility, upon its own
74 | motion or upon the request of a utility, the commission may
75 | authorize a utility to create a utility reserve fund for
76 | infrastructure repair and replacement for a utility for existing
77 | distribution and collection infrastructure that is nearing the
78 | end of its useful life or is detrimental to water quality or



ENROLLED

CS/CS/CS/HB 491, Engrossed 2

2016 Legislature

79 reliability of service, to be funded by a portion of the rates
80 charged by the utility, by a secured escrow account, or through
81 a letter of credit. The commission shall adopt rules to govern
82 the implementation, management, and use of the fund, including,
83 but not limited to, rules related to expenses for which the fund
84 may be used, segregation of reserve account funds, requirements
85 for a capital improvement plan, and requirements for commission
86 authorization before disbursements are made from the fund.

87 (4)

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



ENROLLED

CS/CS/CS/HB 491, Engrossed 2

2016 Legislature

105 | ~~by the commission, upon verified notice to the commission 45~~
106 | ~~days prior to its implementation of the increase or decrease~~
107 | ~~that the rates charged by the supplier of the electric power or~~
108 | ~~the taxes imposed by the governmental authority, or the~~
109 | ~~regulatory assessment fees imposed upon it by the commission~~
110 | ~~have changed. The new rates authorized shall reflect the amount~~
111 | ~~of the change of the ad valorem taxes or rates imposed upon the~~
112 | ~~utility by the governmental authority, other utility, or~~
113 | ~~supplier of electric power, or the regulatory assessment fees~~
114 | ~~imposed upon it by the commission. The approved rates of any~~
115 | ~~utility shall be automatically increased, without hearing, upon~~
116 | ~~verified notice to the commission 45 days prior to~~
117 | ~~implementation of the increase that costs have been incurred for~~
118 | ~~water quality or wastewater quality testing required by the~~
119 | ~~Department of Environmental Protection.~~

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

130 | a. The rates charged by a governmental authority or other



ENROLLED

CS/CS/CS/HB 491, Engrossed 2

2016 Legislature

- 131 water or wastewater utility regulated by the commission which
132 provides utility service to the utility.
- 133 b. The rates or fees that the utility is charged for
134 electric power.
- 135 c. The amount of ad valorem taxes assessed against the
136 utility's used and useful property.
- 137 d. The fees charged by the Department of Environmental
138 Protection in connection with the National Pollutant Discharge
139 Elimination System Program.
- 140 e. The regulatory assessment fees imposed upon the utility
141 by the commission.
- 142 f. Costs incurred for water quality or wastewater quality
143 testing required by the Department of Environmental Protection.
- 144 g. The fees charged for wastewater biosolids disposal.
- 145 h. Costs incurred for any tank inspection required by the
146 Department of Environmental Protection or a local governmental
147 authority.
- 148 i. Treatment plant operator and water distribution system
149 operator license fees required by the Department of
150 Environmental Protection or a local governmental authority.
- 151 j. Water or wastewater operating permit fees charged by
152 the Department of Environmental Protection or a local
153 governmental authority.
- 154 k. Consumptive or water use permit fees charged by a water
155 management district.
- 156 2. A utility may not use this procedure to increase its



ENROLLED

CS/CS/CS/HB 491, Engrossed 2

2016 Legislature

157 rates as a result of an increase in a specific expense item
158 which occurred ~~water quality or wastewater quality testing or an~~
159 ~~increase in the cost of purchased water services, sewer~~
160 ~~services, or electric power or in assessed ad valorem taxes,~~
161 ~~which increase was initiated~~ more than 12 months before the
162 filing by the utility.

163 3. The commission may establish by rule additional
164 specific expense items that are outside the control of the
165 utility and have been imposed upon the utility by a federal,
166 state, or local law, rule, order, or notice. If the commission
167 establishes such a rule, the commission shall review the rule at
168 least once every 5 years and determine if each expense item
169 should continue to be cause for an automatic increase or
170 decrease and whether additional items should be included.

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

174 (8) The amount of rate case expense that the commission
175 determines a public utility may recover through its rates
176 pursuant to this chapter shall be apportioned for recovery over
177 4 years unless a longer period can be justified and is in the
178 public interest. At the conclusion of the recovery period, the
179 public utility shall immediately reduce its rates by the amount
180 of the rate case expense previously included in rates.

181 (9) A utility may not earn a return on the unamortized
182 balance of the rate case expense. Any unamortized balance of



ENROLLED

CS/CS/CS/HB 491, Engrossed 2

2016 Legislature

183 rate case expense shall be excluded in calculating the utility's
184 rate base.

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

187 367.0814 Staff assistance in changing rates and charges;
188 interim rates.—

189 (3) The provisions of s. 367.081(1), (2)(a), and (3) shall
190 apply in determining the utility's rates and charges. However,
191 the commission may not award rate case expenses to recover
192 attorney fees or fees of other outside consultants who are
193 engaged for the purpose of preparing or filing the case if a
194 utility receives staff assistance in changing rates and charges
195 pursuant to this section, unless the Office of Public Counsel or
196 interested parties have intervened. The commission may award
197 rate case expenses for attorney fees or fees of other outside
198 consultants if such fees are incurred for the purpose of
199 providing consulting or legal services to the utility after the
200 initial staff report is made available to customers and the
201 utility. If there is a protest or appeal by a party other than
202 the utility, the commission may award rate case expenses to
203 the utility for attorney fees or fees of other outside
204 consultants for costs incurred after the protest or appeal. By
205 December 31, 2016, the commission must propose rules to
206 administer this subsection.

207 Section 5. Section 367.0816, Florida Statutes, is
208 repealed.



ENROLLED

CS/CS/CS/HB 491, Engrossed 2

2016 Legislature

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

211 367.111 Service.—

212 (3) The commission may, on its own motion or based on
 213 complaints of customers of a water utility subject to its
 214 jurisdiction, review water quality as it pertains to secondary
 215 drinking water standards established by the Department of
 216 Environmental Protection. The commission may, on its own motion
 217 or based on complaints of customers of a wastewater utility
 218 subject to its jurisdiction, review wastewater service as it
 219 pertains to odor, noise, aerosol drift, or lighting.

220 Section 7. Section 367.165, Florida Statutes, is amended
 221 to read:

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

227 (1) A ~~No~~ person, lessee, trustee, or receiver that owns,
 228 operates, manages, or controls ~~owning, operating, managing, or~~
 229 ~~controlling~~ a utility may not shall abandon the utility without
 230 giving 60 days' notice to the county or counties in which the
 231 utility is located and to the commission. A person ~~Anyone~~ who
 232 violates ~~the provisions of this subsection~~ commits ~~is guilty of~~
 233 a misdemeanor of the first degree, punishable as provided in s.
 234 775.082 or s. 775.083. Each day of such abandonment constitutes



ENROLLED

CS/CS/CS/HB 491, Engrossed 2

2016 Legislature

235 a separate offense. In addition, such act is a violation of this
236 chapter, and the commission may impose upon the utility a
237 penalty for each such offense of not more than \$5,000 or may
238 amend, suspend, or revoke its certificate of authorization; each
239 day of such abandonment without prior notice constitutes a
240 separate offense.

241 (2) After receiving such notice, the county, or counties
242 acting jointly if more than one county is affected, shall
243 petition the circuit court of the judicial circuit in which such
244 utility is domiciled to appoint a receiver, which may be the
245 governing body of a political subdivision or any other person
246 deemed appropriate. The receiver shall operate the utility from
247 the date of abandonment until such time as the receiver disposes
248 of the property of the utility in a manner designed to continue
249 the efficient and effective operation of utility service.

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

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

260 403.8532 Drinking water state revolving loan fund; use;



ENROLLED

CS/CS/CS/HB 491, Engrossed 2

2016 Legislature

261 rules.—

262 (3) The department may make, or request that the
263 corporation make, loans, grants, and deposits to community water
264 systems; for-profit, privately owned, or investor-owned water
265 systems; nonprofit, transient, noncommunity water systems; ~~and~~
266 nonprofit, nontransient, noncommunity water systems to assist
267 them in planning, designing, and constructing public water
268 systems, ~~unless such public water systems are for-profit~~
269 ~~privately owned or investor-owned systems that regularly serve~~
270 ~~1,500 service connections or more within a single certified or~~
271 ~~franchised area. However, a for-profit privately owned or~~
272 ~~investor-owned public water system that regularly serves 1,500~~
273 ~~service connections or more within a single certified or~~
274 ~~franchised area may qualify for a loan only if the proposed~~
275 ~~project will result in the consolidation of two or more public~~
276 ~~water systems.~~ The department may provide loan guarantees,
277 purchase loan insurance, and refinance local debt through the
278 issue of new loans for projects approved by the department.
279 Public water systems may borrow funds made available pursuant to
280 this section and may pledge any revenues or other adequate
281 security available to them to repay any funds borrowed.

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

285 1. At least 15 percent for qualifying small public water
286 systems.



ENROLLED

CS/CS/CS/HB 491, Engrossed 2

2016 Legislature

287 2. Up to 15 percent for qualifying financially
288 disadvantaged communities.

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

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