

1 A bill to be entitled

2 An act relating to water and wastewater utility
3 systems; creating s. 159.8105, F.S.; requiring the
4 Division of Bond Finance of the State Board of
5 Administration to review the allocation of private
6 activity bonds to determine the availability of
7 additional allocation or reallocation of bonds for
8 water facilities or sewage facilities; amending s.
9 367.022, F.S.; exempting from regulation by the
10 Florida Public Service Commission a person who resells
11 water service to certain tenants or residents up to a
12 specified cost; amending s. 367.081, F.S.;
13 establishing criteria for determining the quality of
14 water and wastewater services provided by a utility;
15 establishing a procedure for the commission to follow
16 if it determines that a utility has failed to provide
17 water and wastewater services that meet certain
18 standards; authorizing the commission to adopt rules
19 that include fines; providing for recovery of costs
20 prudently incurred by a utility to address certain
21 findings of the commission or the Department of
22 Environmental Protection; authorizing the commission
23 to create a utility reserve fund to establish rates
24 for a utility; providing for the automatic increase or
25 decrease of approved rates under certain
26 circumstances; establishing criteria for adjusted

27 rates; specifying expense items that permit an
28 automatic increase or decrease in utility rates;
29 providing standards to allow the commission to
30 establish, by rule, additional specified expense items
31 that cause an automatic increase or decrease of
32 utility rates; deleting certain requirements for
33 approved utility rates that are automatically
34 increased or decreased, upon notice to the commission;
35 deleting a prohibition to conform to changes made by
36 the act; authorizing a water utility to establish a
37 surcharge or other mechanism to recover the prudently
38 incurred fixed costs of certain system improvement
39 projects approved by the commission; prohibiting the
40 commission from awarding rate case expense under
41 certain circumstances; amending s. 367.0814, F.S.;
42 conforming a cross-reference to changes made by the
43 act; amending s. 403.8532, F.S.; allowing the
44 Department of Environmental Protection to make, or to
45 request that the Florida Water Pollution Control
46 Financing Corporation make, loans, grants, and
47 deposits to for-profit privately owned or investor-
48 owned systems, and deleting current restrictions on
49 such activity; providing an effective date.

50

51 Be It Enacted by the Legislature of the State of Florida:

52

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

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

60 Section 2. Present subsections (9) through (12) of section
 61 367.022, Florida Statutes, are renumbered as subsections (10)
 62 through (13), respectively, and a new subsection (9) is added to
 63 that section, to read:

64 367.022 Exemptions.—The following are not subject to
 65 regulation by the commission as a utility nor are they subject
 66 to the provisions of this chapter, except as expressly provided:

67 (9) A person who resells water service to his or her
 68 tenants or to individually metered residents for a fee that does
 69 not exceed the actual purchase price plus:

70 (a) Up to 9 percent of the actual purchase price; or

71 (b) The actual cost of meter reading and billing.

72 Section 3. Subsections (2), (4), and (7) of section
 73 367.081, Florida Statutes, are amended to read:

74 367.081 Rates; procedure for fixing and changing.—

75 (2) (a) ~~1.~~ The commission shall, ~~either~~ upon request or upon
 76 its own motion, fix rates that ~~which~~ are just, reasonable,
 77 compensatory, and not unfairly discriminatory.

78 1. In each ~~every~~ such proceeding, the commission shall

79 consider the value and quality of the service and the cost of
 80 providing the service, which must ~~shall~~ include, but need not be
 81 limited to, debt interest; the requirements of the utility for
 82 working capital; maintenance, depreciation, tax, and operating
 83 expenses incurred in the operation of all property used and
 84 useful in the public service; and a fair return on the
 85 investment of the utility in property used and useful in the
 86 public service. However, the commission shall not allow the
 87 inclusion of contributions-in-aid-of-construction in the rate
 88 base of a ~~any~~ utility during a rate proceeding, or ~~nor shall the~~
 89 ~~commission~~ impute prospective future contributions-in-aid-of-
 90 construction against the utility's investment in property used
 91 and useful in the public service, and ~~and~~ Accumulated depreciation
 92 on such contributions-in-aid-of-construction shall not be used
 93 to reduce the rate base, and ~~nor shall~~ depreciation on such
 94 contributed assets shall not be considered a cost of providing
 95 utility service.

96 2. For purposes of such proceedings, the commission shall
 97 consider utility property, including land acquired or facilities
 98 constructed or to be constructed within a reasonable time in the
 99 future, up to ~~not to exceed~~ 24 months after the end of the
 100 historic base year used to set final rates unless a longer
 101 period is approved by the commission, to be used and useful in
 102 the public service, if:

- 103 a. Such property is needed to serve current customers;
- 104 b. Such property is needed to serve customers 5 years

105 after the end of the test year used in the commission's final
 106 order on a rate request as provided in subsection (6) at a
 107 growth rate for equivalent residential connections up to ~~not to~~
 108 ~~exceed~~ 5 percent per year; or

109 c. Such property is needed to serve customers more than 5
 110 full years after the end of the test year used in the
 111 commission's final order on a rate request as provided in
 112 subsection (6) only to the extent that the utility presents
 113 clear and convincing evidence to justify such consideration.

114 3. In determining the value and quality of water service
 115 provided by a utility and whether such utility has satisfied its
 116 obligation to provide water service to its customers, the
 117 commission shall consider the extent to which the utility meets
 118 secondary drinking water standards regarding taste, odor, color,
 119 or corrosiveness adopted by the Department of Environmental
 120 Protection and the local government. In making its
 121 determination, the commission shall consider:

122 a. Testimony and evidence provided by customers and the
 123 utility.

124 b. Complaints that relate to the secondary drinking water
 125 standards which customers have filed during the past 5 years
 126 with the commission, the Department of Environmental Protection,
 127 the county health departments, or the applicable local
 128 government.

129 c. The results of past tests required by the Department of
 130 Environmental Protection or county health departments which

131 measure the utility's compliance with the applicable secondary
132 drinking water standards.

133 d. The results of other tests, if deemed necessary by the
134 commission.

135 4. In determining the value and quality of wastewater
136 service provided by a utility, the commission shall consider the
137 extent to which the utility provides wastewater service to its
138 customers which does not cause odor, noise, aerosol drift, or
139 lighting that adversely affects customers. In making its
140 determination, the commission shall consider:

141 a. Testimony and evidence provided by customers and the
142 utility.

143 b. Complaints related to the alleged odor, noise, aerosol
144 drift, or lighting problem which customers have filed over the
145 past 5 years with any of the following:

146 (I) The commission;

147 (II) The Department of Environmental Protection;

148 (III) The county health departments; or

149 (IV) The local government.

150 5. If the commission determines that a utility provides
151 water service that does not meet the secondary water quality
152 standards of the Department of Environmental Protection and the
153 local government regarding taste, odor, color, or corrosiveness,
154 or that a utility provides wastewater service that adversely
155 affects customers due to odor, noise, aerosol drift, or
156 lighting, the utility shall provide estimates of the costs and

157 benefits of various solutions to the problems. The utility shall
158 meet with its customers to discuss the costs and benefits of the
159 various solutions and report to the commission the conclusions
160 of the meetings. The commission shall adopt rules necessary to
161 assess and enforce the utility's compliance with this
162 subparagraph. The rules shall prescribe penalties, including
163 finances and reduction of return on equity of up to 100 basis
164 points, if a utility fails to adequately address or offer
165 solutions to the water or wastewater problems.

166 6. A utility may recover its prudently incurred costs and
167 expenses to resolve deficiencies found by the commission
168 pursuant to this subsection or found by the Department of
169 Environmental Protection in a proceeding under chapter 403,
170 related to noncompliance with secondary drinking water standards
171 regarding taste, odor, color, or corrosiveness, or concerning
172 wastewater service issues related to odor, noise, aerosol drift,
173 or lighting. Such costs shall be recoverable through a rate case
174 filed pursuant to s. 367.081 or through a separate proceeding
175 initiated by petition of the utility. In its filing, the utility
176 shall describe the activities and costs projected or incurred to
177 resolve the deficiencies found by the commission or the
178 department. Such costs may be a result of action agreed upon by
179 the utility and the commission or the department or as a
180 consequence of a consent order.

181
182 Notwithstanding ~~the provisions of~~ this paragraph, the commission

183 shall approve rates for service which allow a utility to recover
184 from customers the full amount of environmental compliance
185 costs. Such rates may not include charges for allowances for
186 funds prudently invested or similar charges. For purposes of
187 this requirement, the term "environmental compliance costs"
188 includes all reasonable expenses and fair return on any prudent
189 investment incurred by a utility in complying with the
190 requirements or conditions contained in any permitting,
191 enforcement, or similar decisions of the United States
192 Environmental Protection Agency, the Department of Environmental
193 Protection, a water management district, or any other
194 governmental entity with similar regulatory jurisdiction.

195 (b) In establishing initial rates for a utility, the
196 commission may project the financial and operational data as set
197 out in paragraph (a) to a point in time when the utility is
198 expected to be operating at a reasonable level of capacity.

199 (c) In establishing rates for a utility, the commission
200 may authorize the creation of a utility reserve fund. The
201 commission shall adopt rules to govern the fund, including, but
202 not limited to, rules relating to expenses for which the fund
203 may be used, segregation of reserve account funds, requirements
204 for a capital improvement plan, and requirements for commission
205 authorization before disbursements are made from the reserve
206 fund.

207 (4) (a) On or before March 31 of each year, the commission
208 by order shall establish a price increase or decrease index for

209 major categories of operating costs incurred by utilities
210 subject to its jurisdiction reflecting the percentage of
211 increase or decrease in such costs from the most recent 12-month
212 historical data available. The commission by rule shall
213 establish the procedure to be used in determining such indices
214 and a procedure by which a utility, without further action by
215 the commission, or the commission on its own motion, may
216 implement an increase or decrease in its rates based upon the
217 application of the indices to the amount of the major categories
218 of operating costs incurred by the utility during the
219 immediately preceding calendar year, except to the extent of any
220 disallowances or adjustments for those expenses of that utility
221 in its most recent rate proceeding before the commission. The
222 rules shall provide that, upon a finding of good cause,
223 including inadequate service, the commission may order a utility
224 to refrain from implementing a rate increase hereunder unless
225 implemented under a bond or corporate undertaking in the same
226 manner as interim rates may be implemented under s. 367.082. A
227 utility may not use this procedure between the official filing
228 date of the rate proceeding and 1 year thereafter, unless the
229 case is completed or terminated at an earlier date. A utility
230 may not use this procedure to increase any operating cost for
231 which an adjustment has been or could be made under paragraph
232 (b), or to increase its rates by application of a price index
233 other than the most recent price index authorized by the
234 commission at the time of filing.

235 (b) Upon verified notice to the commission 45 days before
236 implementation of the increase or decrease, and without a
237 hearing, the approved rates of a utility shall automatically
238 increase or decrease. Such notice shall inform the commission
239 that the utility's costs for a specified expense item have
240 changed.

241 1. The new rates shall reflect, on an amortized or annual
242 basis, as appropriate, the cost or amount of change in the cost
243 of the specified expense item. The new rates may not reflect the
244 costs of a specified expense item already included in the rates
245 of a utility. Specified expense items eligible for automatic
246 increase or decrease of a utility's rates include, but are not
247 limited to:

248 a. The rates charged by a governmental authority or other
249 water or wastewater utility regulated by the commission which
250 provides utility service to the utility.

251 b. The rates or fees that the utility is charged for
252 electric power.

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

255 d. The fees charged by the Department of Environmental
256 Protection in connection with the National Pollutant Discharge
257 Elimination System Program permit.

258 e. The regulatory assessment fees imposed upon the utility
259 by the commission.

260 f. Costs incurred for water quality or wastewater quality

261 testing required by the Department of Environmental Protection.
262 g. The fees charged for wastewater sludge disposal.
263 h. A loan service fee or loan origination fee associated
264 with a loan related to an eligible project. The commission shall
265 adopt rules governing the determination of eligible projects,
266 which shall be limited to those projects associated with new
267 infrastructure or improvements to existing infrastructure needed
268 to achieve or maintain compliance with federal, state, and local
269 governmental primary or secondary drinking water standards or
270 wastewater treatment standards that relate to:
271 (I) The provision of water or wastewater service for
272 existing customers;
273 (II) The remediation or prevention of a violation of
274 federal, state, and local governmental primary or secondary
275 health standards;
276 (III) The replacement or upgrade of aging water or
277 wastewater infrastructure if needed to achieve or maintain
278 compliance with federal, state, and local governmental primary
279 or secondary drinking water regulations; or
280 (IV) Projects consistent with the most recent long-range
281 plan of the utility on file with the commission. Eligible
282 projects do not include projects primarily intended to serve
283 future growth.
284 i. Costs incurred for a tank inspection required by the
285 Department of Environmental Protection or a local governmental
286 authority.

287 j. Operator and distribution license fees required by the
 288 Department of Environmental Protection or a local governmental
 289 authority.

290 k. Water or wastewater operating permit fees charged by
 291 the Department of Environmental Protection or a local
 292 governmental authority.

293 1. Consumptive or water use permit fees charged by a water
 294 management district.

295 2. A utility may not use the procedure under this
 296 paragraph to increase or decrease its rates as a result of an
 297 increase or decrease in a specific expense item which occurred
 298 more than 12 months before the filing by the utility.

299 3. The commission may establish by rule additional
 300 specific expense items that cause an automatic increase or
 301 decrease in a utility's rates as provided in this paragraph. To
 302 be eligible for such treatment, an additional expense item shall
 303 be imposed upon the utility by a federal, state, or local law,
 304 rule, order, or notice and shall be outside the control of the
 305 utility. If the commission exercises its authority to establish
 306 such rule, the commission shall, at least once every 5 years,
 307 review the rule and determine if each expense item should
 308 continue to be cause for the automatic increase or decrease of a
 309 utility's rates, or if any additional items should become cause
 310 for the automatic increase or decrease of a utility's rates as
 311 provided in this paragraph ~~The approved rates of any utility~~
 312 ~~which receives all or any portion of its utility service from a~~

313 ~~governmental authority or from a water or wastewater utility~~
314 ~~regulated by the commission and which redistributes that service~~
315 ~~to its utility customers shall be automatically increased or~~
316 ~~decreased without hearing, upon verified notice to the~~
317 ~~commission 45 days prior to its implementation of the increase~~
318 ~~or decrease that the rates charged by the governmental authority~~
319 ~~or other utility have changed. The approved rates of any utility~~
320 ~~which is subject to an increase or decrease in the rates or fees~~
321 ~~that it is charged for electric power, the amount of ad valorem~~
322 ~~taxes assessed against its used and useful property, the fees~~
323 ~~charged by the Department of Environmental Protection in~~
324 ~~connection with the National Pollutant Discharge Elimination~~
325 ~~System Program, or the regulatory assessment fees imposed upon~~
326 ~~it by the commission shall be increased or decreased by the~~
327 ~~utility, without action by the commission, upon verified notice~~
328 ~~to the commission 45 days prior to its implementation of the~~
329 ~~increase or decrease that the rates charged by the supplier of~~
330 ~~the electric power or the taxes imposed by the governmental~~
331 ~~authority, or the regulatory assessment fees imposed upon it by~~
332 ~~the commission have changed. The new rates authorized shall~~
333 ~~reflect the amount of the change of the ad valorem taxes or~~
334 ~~rates imposed upon the utility by the governmental authority,~~
335 ~~other utility, or supplier of electric power, or the regulatory~~
336 ~~assessment fees imposed upon it by the commission. The approved~~
337 ~~rates of any utility shall be automatically increased, without~~
338 ~~hearing, upon verified notice to the commission 45 days prior to~~

339 ~~implementation of the increase that costs have been incurred for~~
340 ~~water quality or wastewater quality testing required by the~~
341 ~~Department of Environmental Protection. The new rates authorized~~
342 ~~shall reflect, on an amortized basis, the cost of, or the amount~~
343 ~~of change in the cost of, required water quality or wastewater~~
344 ~~quality testing performed by laboratories approved by the~~
345 ~~Department of Environmental Protection for that purpose. The new~~
346 ~~rates, however, shall not reflect the costs of any required~~
347 ~~water quality or wastewater quality testing already included in~~
348 ~~a utility's rates. A utility may not use this procedure to~~
349 ~~increase its rates as a result of water quality or wastewater~~
350 ~~quality testing or an increase in the cost of purchased water~~
351 ~~services, sewer services, or electric power or in assessed ad~~
352 ~~valorem taxes, which increase was initiated more than 12 months~~
353 ~~before the filing by the utility.~~

354 4. ~~The provisions of~~ This subsection does ~~de~~ not prevent a
355 utility from seeking a change in rates under ~~pursuant to the~~
356 ~~provisions of~~ subsection (2).

357 (c) Before implementing a change in rates under this
358 subsection, the utility must ~~shall~~ file an affirmation under
359 oath as to the accuracy of the figures and calculations upon
360 which the change in rates is based, stating that the change will
361 not cause the utility to exceed the range of its last authorized
362 rate of return on equity. A person who ~~Whoever~~ makes a false
363 statement in the affirmation required under this subsection
364 ~~hereunder~~, which statement he or she does not believe to be true

365 in regard to any material matter, commits ~~is guilty of~~ a felony
366 of the third degree, punishable as provided in s. 775.082, s.
367 775.083, or s. 775.084.

368 (d) If, within 15 months after the filing of a utility's
369 annual report required by s. 367.121, the commission finds that
370 the utility exceeded the range of its last authorized rate of
371 return on equity after an adjustment in rates as authorized by
372 this subsection was implemented within the year for which the
373 report was filed or was implemented in the preceding year, the
374 commission may order the utility to refund, with interest, the
375 difference to the ratepayers and adjust rates accordingly. This
376 provision does ~~shall~~ not ~~be construed to~~ require a bond or
377 corporate undertaking not otherwise required.

378 (e) Notwithstanding anything in this section ~~herein~~ to the
379 contrary, a utility may not adjust its rates under this
380 subsection more than two times in any 12-month period. For the
381 purpose of this paragraph, a combined application or
382 simultaneously filed applications that were filed under the
383 provisions of paragraphs (a) and (b) are ~~shall be~~ considered one
384 rate adjustment.

385 (f) At least annually, the commission shall ~~may regularly,~~
386 ~~not less often than once each year,~~ establish by order a
387 leverage formula or formulae that reasonably reflect the range
388 of returns on common equity for an average water or wastewater
389 utility and which, for purposes of this section, are ~~shall be~~
390 used to calculate the last authorized rate of return on equity

391 for a ~~any~~ utility which otherwise would not have an ~~ne~~
 392 established rate of return on equity. In any other proceeding in
 393 which an authorized rate of return on equity is to be
 394 established, a utility, in lieu of presenting evidence on its
 395 rate of return on common equity, may move the commission to
 396 adopt the range of rates of return on common equity which is
 397 ~~that has been~~ established under this paragraph.

398 (7) A water utility may file tariffs establishing a
 399 surcharge, or other method for the automatic adjustment of its
 400 rates, which shall provide for recovery of the prudently
 401 incurred fixed costs comprised of depreciation and pretax
 402 returns of certain system improvement projects, as approved by
 403 the commission, that are completed and placed in service between
 404 base rate proceedings. Such projects shall be for the specific
 405 purpose of achieving compliance with secondary drinking water
 406 quality standards regarding taste, odor, color, or
 407 corrosiveness. With respect to each tariff filed, the commission
 408 shall prescribe the specific procedures to be followed in
 409 establishing the sliding scale or other automatic adjustment
 410 method.

411 (8)~~(7)~~ The commission shall determine the reasonableness
 412 of rate case expenses and shall disallow all rate case expenses
 413 determined to be unreasonable. A ~~No~~ rate case expense determined
 414 to be unreasonable may not be ~~shall be~~ paid by a consumer. In
 415 determining the reasonable level of rate case expense, the
 416 commission shall consider the extent to which a utility has used

417 ~~utilized~~ or failed to use ~~utilize~~ the provisions of paragraph
 418 (4) (a) or paragraph (4) (b) and such other criteria as it may
 419 establish by rule.

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

422 367.0814 Staff assistance in changing rates and charges;
 423 interim rates.—

424 (3) The provisions of s. 367.081(1), (2) (a), (2) (c), and
 425 (3), and (7) ~~shall~~ apply in determining the utility's rates and
 426 charges.

427 Section 5. Subsection (3) of section 403.8532, Florida
 428 Statutes, is amended to read:

429 403.8532 Drinking water state revolving loan fund; use;
 430 rules.—

431 (3) The department may make, or request that the
 432 corporation make, loans, grants, and deposits to community water
 433 systems, for-profit privately owned or investor-owned water
 434 systems, nonprofit transient noncommunity water systems, and
 435 nonprofit nontransient noncommunity water systems to assist them
 436 in planning, designing, and constructing public water systems,
 437 ~~unless such public water systems are for-profit privately owned~~
 438 ~~or investor-owned systems that regularly serve 1,500 service~~
 439 ~~connections or more within a single certified or franchised~~
 440 ~~area. However, a for-profit privately owned or investor-owned~~
 441 ~~public water system that regularly serves 1,500 service~~
 442 ~~connections or more within a single certified or franchised area~~

443 ~~may qualify for a loan only if the proposed project will result~~
444 ~~in the consolidation of two or more public water systems.~~ The
445 department may provide loan guarantees, purchase loan insurance,
446 and refinance local debt through the issue of new loans for
447 projects approved by the department. Public water systems may
448 borrow funds made available pursuant to this section and may
449 pledge any revenues or other adequate security available to them
450 to repay any funds borrowed.

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

454 1. At least 15 percent for qualifying small public water
455 systems.

456 2. Up to 15 percent for qualifying financially
457 disadvantaged communities.

458 (b) If an insufficient number of the projects for which
459 funds are reserved under this subsection have been submitted to
460 the department at the time the funding priority list authorized
461 under this section is adopted, the reservation of these funds no
462 longer applies. The department may award the unreserved funds as
463 otherwise provided in this section.

464 Section 6. This act shall take effect July 1, 2014.