

CHAPTER 2016-226

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 491

An act relating to water and wastewater; creating s. 159.8105, F.S.; requiring the Division of Bond Finance of the State Board of Administration to review the allocation of private activity bonds to determine the availability of additional allocation and reallocation of bonds for water and wastewater infrastructure projects; amending s. 367.022, F.S.; exempting from regulation by the Florida Public Service Commission a person who resells water service to certain tenants or residents up to a specified percentage or cost; amending s. 367.081, F.S.; providing that the commission may authorize a utility to create a utility reserve fund under certain circumstances; requiring the commission to adopt rules to govern the implementation, management, and use of the fund; establishing criteria for adjusted rates; specifying expense items that may be the basis for an automatic increase or decrease of a utility's rates; authorizing the commission to establish by rule additional specified expense items; specifying the time period over which rate case expenses may be apportioned if a public utility is authorized to recover those expenses through its rates; prohibiting a utility from earning a return on the unamortized balance of the rate case expense; amending s. 367.0814, F.S.; authorizing the commission to award rate case expenses to recover attorney fees or fees of other outside consultants in certain circumstances; requiring the commission to propose rules by a certain date; repealing s. 367.0816, F.S., relating to the recovery of rate case expenses; amending s. 367.111, F.S.; authorizing the commission to review water quality and wastewater service under certain circumstances; amending s. 367.165, F.S.; requiring counties to comply with requirements for abandoned water and wastewater systems; amending s. 403.8532, F.S.; authorizing the Department of Environmental Protection to require or request that the Florida Water Pollution Control Financing Corporation make loans, grants, and deposits to for-profit, privately owned, or investor-owned water systems; removing current restrictions on such activities; providing an effective date.

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

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

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

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

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

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

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

367.081 Rates; procedure for fixing and changing.—

(2)

(c) In establishing rates for a utility, upon its own motion or upon the request of a utility, the commission may authorize a utility to create a utility reserve fund for infrastructure repair and replacement for a utility for existing distribution and collection infrastructure that is nearing the end of its useful life or is detrimental to water quality or reliability of service, to be funded by a portion of the rates charged by the utility, by a secured escrow account, or through a letter of credit. The commission shall adopt rules to govern the implementation, management, and use of the fund, including, but not limited to, rules related to expenses for which the fund may be used, segregation of reserve account funds, requirements for a capital improvement plan, and requirements for commission authorization before disbursements are made from the fund.

(4)

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

authority, or the regulatory assessment fees imposed upon it by the commission have changed. The new rates authorized shall reflect the amount of the change of the ad valorem taxes or rates imposed upon the utility by the governmental authority, other utility, or supplier of electric power, or the regulatory assessment fees imposed upon it by the commission. The approved rates of any utility shall be automatically increased, without hearing, upon verified notice to the commission 45 days prior to implementation of the increase that costs have been incurred for water quality or wastewater quality testing required by the Department of Environmental Protection.

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

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

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

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

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

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

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

g. The fees charged for wastewater biosolids disposal.

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

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

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

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

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

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

4. The provisions of This subsection does do not prevent a utility from seeking a change in rates pursuant to the provisions of subsection (2).

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

(9) A utility may not earn a return on the unamortized balance of the rate case expense. Any unamortized balance of rate case expense shall be excluded in calculating the utility's rate base.

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

367.0814 Staff assistance in changing rates and charges; interim rates.

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

December 31, 2016, the commission must propose rules to administer this subsection.

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

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

367.111 Service.—

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

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

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

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

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

(3) The notification to the commission under subsection (1) is sufficient cause for revocation, suspension, or amendment of the certificate of authorization of the utility as of the date of abandonment. The receiver operating such utility shall be considered to hold a temporary authorization

from the commission, and the approved rates of the utility shall be deemed to be the interim rates of the receiver until modified by the commission.

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

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

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

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

1. At least 15 percent for qualifying small public water systems.
2. Up to 15 percent for qualifying financially disadvantaged communities.

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

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

Approved by the Governor April 14, 2016.

Filed in Office Secretary of State April 14, 2016.