

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/SB 950

INTRODUCER: Committee on Environmental Preservation and Conservation and Senator Bennett

SUBJECT: Water and Wastewater Utilities

DATE: March 24, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	Fav/CS
2.			CU	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The committee substitute (CS) creates a mechanism for regulated water and wastewater utilities to recover, through a surcharge, incurred capital costs for investment in non-revenue producing system improvements. The CS defines eligible projects and the manner in which companies may request cost recovery and how the surcharge should be implemented.

The CS creates section 367.0819 of the Florida Statutes.

II. Present Situation:

Chapter 367, F.S., establishes the authority of the Public Service Commission (PSC) to establish rates and service of regulated water and wastewater utilities. A regulated water or wastewater utility may only impose and collect rates and charges approved by the PSC¹. Section 367.081(2)(a), F.S., further specifies that the PSC, “on its own motion or upon request of the utility, may fix rates for the utility that are just, reasonable, compensatory, and not unfairly discriminatory.”²

The section further provides that the PSC consider: the value and quality of the service and the

¹ See s. 367.081, F.S.

² See s. 367.081(2)(a)1., F.S.

cost of providing the service, which includes, but is not limited to, debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service.

Section 367.0822, F.S., authorizes a utility, in a limited proceeding, to come before the PSC for any matter under its jurisdiction including a request to adjust its rates. Within the proceeding, the PSC must identify issues to be considered and can, upon its discretion, expand the scope of the proceeding to other related matters. A limited proceeding cannot be used to adjust rates if the effect of the adjustment would be to change the last authorized rate of return.

Currently, infrastructure improvements have to be incorporated in utility rates via a PSC proceeding under either s. 367.081(2), F.S., or s. 367.0822, F.S. Current law does not permit these infrastructure improvement surcharges without an evidentiary hearing. According to s. 367.081(2), F.S., the portion of unutilized capacity beyond the five-year period cannot be recovered from current customers.

Section 367.091 (6), F.S., provides that an application through a tariff filing to establish, increase, or change a rate or charge, other than through a rate proceeding pursuant to ss. 367.081, or s. 367.101, F.S., must be accompanied by a cost justification. The statute further provides that the PSC may withhold consent to the operation of any or all portions of the new rate schedules by a vote to that effect within 60 days and must give a reason or statement of good cause for withholding its consent. The PSC must make its final decision on the application within eight months after the official date of filing.

The PSC typically approves or denies tariff filings, giving substantially affected persons a point of entry to file a petition and request a hearing to protest any points of contention with the decision. Substantially affected persons, including customers of the utility, may protest the Proposed Agency Action (PAA), potentially triggering a PSC evidentiary proceeding.

In its Report No. 08-63, the Office of Program Policy Analysis & Government Accountability (OPPAGA) addressed the “unique financial challenges” of small water and wastewater utilities regulated by the PSC. The OPPAGA report notes that these small utility systems, because of a lack of economies of scale, frequently face financial challenges in maintaining system reliability, operating in a cost-effective manner, retaining an adequate labor pool, sustaining a stable financial position, and complying with regulatory requirements. The report also notes that these small utility systems may be reluctant to file for rate increases due to the time and expense involved in rate proceedings and the desire to keep rates low in light of the fact that, in contrast to some larger utilities, they have fewer customers over which to spread costs. The report suggests that the long-term financial viability and adequate investment in infrastructure may suffer as a result.³

The OPPAGA report identifies some existing regulatory tools used to address these issues, including staff-assisted rate cases for small water and wastewater utilities, a price index that all

³ *The PSC and Legislature Could Consider Several Options to Enhance Services and Consumer Protection*, Office of Program Analysis & Government Accountability, Report No. 08-63. released November 2008.

water and wastewater utilities may apply to major categories of operating costs without a hearing, and pass-through rate adjustments that all water and wastewater utilities may employ for specific types of costs without a hearing. Still, the report suggests that the PSC should monitor small water and wastewater utilities to ensure adequate investment in infrastructure and, if deemed necessary, should consider adopting additional regulatory tools. As an example of such a tool, the report discusses a capital improvement surcharge mechanism by which a temporary surcharge would be added to rates to enable expeditious recovery of costs for qualifying investments and expenditures.⁴

III. Effect of Proposed Changes:

Section 1 creates s. 367.0189(1), F.S., to promote utility investment in non-revenue producing system improvement projects and for the PSC to allow for recovery of incurred capital costs of projects to enhance water quality, fire protection reliability, and long-term system viability through a surcharge. The section defines “nonrevenue producing project” as a project that is not constructed or installed for the purpose of serving a new customer. Further, according to the PSC, an improvement project must be completed before the utility may recover costs for the project through the surcharge.

Section 367.0819(2)(a) F.S., provides that in order for the utility to recover costs from its customers, it must submit a proposed tariff, for commission approval, establishing a formula for calculation of rates. The calculation must include recovery of depreciation and return on investment for each eligible project. The return on investment for each eligible project must be based on the utility’s last authorized pre-tax rate of return. The surcharge must be calculated, applied, and recovered in accordance with the utility’s last authorized rate structure. Section 367.0819(4)(d) and (5) provides that a utility may not collect on costs more than once when a surcharge has been approved. The surcharge will be reset at zero and any additional proposed costs must be submitted separately. The utility will have to submit another tariff and any required data to meet the established threshold to request any additional cost recovery through surcharges. The surcharge may not exceed 8 percent of the utility’s total revenue.

Section 367.0819(2)(b), F.S., specifies that the company provide notice by mail and publish notice in a widely circulated newspaper to each customer in the affected service area. The CS does not address the timing of the notice to a utility’s customers. Traditionally, a customer should be given notice of a change in a rate before that rate is effective to allow enough time to alter usage patterns. It appears to not allow for customer meetings in the utility’s service area.

Section 367.0189(2) (c), F.S., requires that the utility affirm the accuracy of any financial data provided that would determine the surcharge rate and any adjustments. Further, the utility must affirm that the surcharge will not cause the utility to exceed the range of its last authorized rate of return on equity. Any person who provides false statements to the PSC is subject to a third degree felony charge. Section 367.0819 (2) (d), F.S., provides that if within 15 months after the utility files its required annual report (outlined in s. 367.121, F.S.), the PSC finds that the surcharge has caused the utility to exceed the authorized rate of return on equity the PSC may

⁴ *The PSC and Legislature Could Consider Several Options to Enhance Services and Consumer Protection*, Office of Program Analysis & Government Accountability, Report No. 08-63, released November 2008.

order the utility to refund, with interest, the difference to the ratepayers and adjust rates accordingly.

Section 367.0189(3), F.S., allows the surcharge tariff to be approved automatically within 60 days of filing. According to PSC rules, a substantially affected person has 21 days to protest the approval of a tariff that would then trigger an evidentiary hearing. This section removes the option for a public hearing as long as the utility has met the established filing requirements.

Proposed s. 367.0189(4)(a), F.S., specifies that the surcharge is presented as a separate line item on the customer's bill and must follow the established billing cycle. Section 367.0189(4)(b), F.S., specifies that an established surcharge must be revaluated and adjusted on a quarterly basis to reflect the costs of eligible projects placed into service. The utility must file all supporting data to increase or reduce the surcharge to the PSC and the Office of Public Counsel (OPC). The utility must also affirm the accuracy of the data. The surcharge adjustment takes effect 45 days after the supporting affirmed data is filed with the PSC and OPC. The difference between revenue and costs will be recovered or refunded, as appropriate, by the utility without a hearing. Revenue in excess of system-improvement costs will be refunded with interest to customers pursuant to PSC rule.

Section 367.0189(6)(b), F.S., defines the type of infrastructure improvement projects eligible for recovery through a surcharge as being capital improvement projects. A project is eligible for recovery if it is not included in the test year on which current rates are based. There are occasions when the PSC includes projects in rates set by a rate proceeding under s. 367.081(2), F.S., that fall outside the test year. However, the project items are not eligible for recovery if already included in established rates. The language in s. 367.0189(6)(b), F.S., further states that a project is only eligible if it is used for the production, treatment, transmission, storage, distribution, or provision of potable or recycled water to the public or for the collection, transportation, or disposal of sewage for the public. However, examples of eligible projects listed in the CS include such items as "main relining and rehabilitation," and "fire and flushing hydrant installation and replacement." In addition, the section provides the caveat that eligible projects "are not limited to" those described items. This language is broad and could result in filings that would not be generally considered capital infrastructure improvement projects.⁵

The language specifically designates projects that improve facilities to meet water quality standards set by the U. S. Environmental Protection Agency (EPA) to be eligible for recovery. Due to the implementation of new EPA rules on Numeric Nutrient Criteria Standards, it is reasonable to expect that there will be an increase in the number of infrastructure improvement projects undertaken by affected wastewater utilities. Numeric nutrient criteria compliance costs for affected utilities are expected to be substantial and the increase in costs will result in rate increases.

Section 367.0819(7), F.S., defines water and waste water treatment. Section 367.0819(8), F.S., requires the utility that is granted a surcharge to maintain for public inspection, the project name, description, schedule and cost. The schedule must be posted for public inspection in each utility's office.

⁵ *Id.*

Section 367.0189(9), F.S., gives the PSC authority to review the prudence of all of the projects funded by the surcharge during a utility's subsequent rate proceeding. The section also requires that refunds plus interest be paid to the customers in the event that a project is found to be imprudent or if the project was not used and useful in the public service. This process may result in more infrequent rate proceedings and the prudence review may not occur in a timely manner. This may result in full recovery of a project before any review has taken place.

Section 2 provides that this act shall take effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The CS will encourage investment by water and wastewater utilities in infrastructure projects. Utilities who choose to undergo these capital improvements will incur costs for attorney's fees and consulting fees. If their request is protested, the companies will further incur costs associated with defending the request. The proposed changes might allow some companies to obtain quicker rate relief. These capital improvements may improve the job market for occupations related to executing those improvements. Customers of utilities who opt to use this new mechanism will incur surcharges associated with the water and wastewater improvement projects.

C. Government Sector Impact:

According to the PSC, there will be increased costs and up to two FTE's including the cost of two regulatory analysts.

In general, the CS allows more expedient recovery of infrastructure improvement investments by investor owned water and wastewater utilities if no substantially affected

person formally protests the PSC's decision. Florida law requires the PSC to give substantially affected persons a point of entry to contest tariff decisions. The likelihood for consumer intervention escalates as the costs of the projects increase. It is not clear whether costly PSC proceedings can be avoided since the decision to approve a tariff may be protested, potentially triggering a PSC evidentiary proceeding. There will be staff time devoted to rulemaking, including, drafting forms as well as writing administrative procedures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the PSC, providing rulemaking authority to the PSC would permit the PSC and the industry to develop rule guidance on the appropriate return on equity and mechanisms for updating the procedures related to the collection of surcharges. Further, this could address some of the issues related to increased workload to the agency.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/SB 950 by the Committee on Environmental Preservation and Conservation on March 23, 2010:

- deletes “quarterly” as a payment schedule option for the surcharge;
- specifies that surcharge is calculated on the pre-tax rate of return;
- details customer notification requirements;
- requires the utilities to affirm financial data provided that would affect the surcharge calculation, including requiring a detailed reconciliation report, and imposes a third degree felony for providing false statements; and
- specifies that if within 15 months after the filing of a utility's annual report the PSC finds that the utility exceeded the authorized rate of return on equity the PSC may order the utility to offer refunds with interest to the customers and adjust the rates accordingly.

B. Amendments:

None.