

By the Committee on Environmental Preservation and Conservation;
and Senator Bennett

592-02911-11

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1 A bill to be entitled
2 An act relating to water and wastewater utilities;
3 creating s. 367.0819, F.S.; providing for the recovery
4 of costs through a surcharge for certain water and
5 wastewater system improvement projects; defining the
6 term "nonrevenue-producing project"; requiring
7 utilities to submit surcharge tariffs reflecting the
8 surcharge calculation for recovery of such costs to
9 the Florida Public Service Commission for approval and
10 to provide specified notice of such surcharge tariff
11 filings; providing for the automatic approval of the
12 surcharge tariff within a specified period after
13 filing the surcharge tariff with the commission;
14 requiring the utility to file a sworn affirmation as
15 to the accuracy of the figures and calculations;
16 providing for penalties; requiring the utility to
17 submit an annual report regarding the rate of return
18 to the commission; allowing the commission to order
19 the utility to make refunds, with interest, under
20 certain circumstances; requiring that the surcharge
21 notice be presented as a separate line item on the
22 customer's bill; specifying a limitation on the
23 surcharge amount; providing requirements for billing,
24 reconciliation, and quarterly adjustment of the
25 surcharge; specifying a limitation on the recovery of
26 project costs; providing project eligibility criteria;
27 specifying water and wastewater treatment criteria;
28 providing requirements for notice, maintenance, and
29 availability of certain records; authorizing the

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30 commission to review specified projects; providing
31 that the surcharge is subject to refund under certain
32 conditions; providing an effective date.

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

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36 Section 1. Section 367.0819, Florida Statutes, is created
37 to read:

38 367.0819 Recovery of costs for system improvement
39 projects.-

40 (1) (a) In order to promote utility investment in system
41 improvement projects, the commission shall allow a utility to
42 recover prudently incurred capital costs related to nonrevenue-
43 producing projects to enhance water quality, fire protection
44 reliability, and long-term system viability through a surcharge
45 collected pursuant to this section. The costs of existing or new
46 facilities to serve new customers are not recoverable through
47 this surcharge.

48 (b) For purposes of this section, the term "nonrevenue-
49 producing project" means a project that is not constructed or
50 installed for the purpose of serving a new customer.

51 (2) A utility seeking to establish a surcharge pursuant to
52 this section must:

53 (a) Submit, for commission approval, the proposed surcharge
54 tariff establishing a formula for the calculation of rates
55 reflecting the surcharge, which rates provide for recovery of
56 depreciation and return on investment for each eligible project.
57 The return on investment for each eligible project must be based
58 on the utility's last authorized pretax rate of return. The

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59 surcharges must be calculated, applied, and recovered in
60 accordance with the utility's last authorized rate structure.
61 Until the surcharge is reset pursuant to paragraph (4)(d), the
62 total cumulative amount of the surcharge revenue recovered by
63 the utility may not exceed 8 percent of the utility's total
64 revenues, excluding revenues collected through the surcharge,
65 for the preceding calendar year.

66 (b) Provide notice by mail of the initial surcharge tariff
67 filing to each customer in the affected service areas and
68 publish notice of the surcharge filing in a newspaper of general
69 circulation in the affected service areas.

70 (c)1. Before implementing a surcharge under this section,
71 file a sworn affirmation as to the accuracy of the figures and
72 calculations upon which surcharge or any adjustment thereto is
73 based, stating that the change in rates will not cause the
74 utility to exceed the range of its last authorized rate of
75 return on equity. Whoever makes a false statement in the
76 affirmation required under this subparagraph, which statement he
77 or she does not believe to be true in regard to any material
78 matter, commits a felony of the third degree, punishable as
79 provided in s. 775.082, s. 775.083, or s. 775.084.

80 2. If, within 15 months after the filing of a utility's
81 annual report required by s. 367.121, the commission finds that
82 the utility exceeded the range of its last authorized rate of
83 return on equity after the implementation of the surcharge
84 authorized by this section within the year for which the report
85 was filed, the commission may order the utility to refund, with
86 interest, the difference to the ratepayers and adjust rates
87 accordingly. This provision does require a bond or corporate

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88 undertaking in order for the utility to implement the surcharge.

89 (3) A surcharge tariff submitted by a utility in compliance
90 with the requirements of paragraph (2) (a) is not subject to s.
91 367.091 and shall be approved as a matter of right without
92 hearing within 60 days after filing the surcharge tariff with
93 the commission.

94 (4) A surcharge established pursuant to this section shall
95 be:

96 (a) Presented as a separate line item on the customer's
97 bill and billed in accordance with the billing cycle in the
98 utility's approved tariff. Any changes in the surcharge must be
99 reflected on the first bill the customer receives following the
100 change of the surcharge.

101 (b) Revaluated, and if necessary adjusted, on a quarterly
102 basis to reflect the costs of eligible projects placed into
103 service. The utility shall file the supporting data to increase
104 or reduce the surcharge with the commission for each
105 reevaluation, along with a sworn affirmation required by
106 subparagraph (2) (c)1., and shall contemporaneously deliver
107 copies of the supporting data and the sworn affirmation to the
108 Office of Public Counsel. The surcharge adjustment is not
109 subject to s. 367.091 and shall take effect without hearing 45
110 days after the supporting data and sworn affirmation are filed
111 with the commission and delivered to the Office of Public
112 Counsel.

113 (c) Subject to an annual reconciliation of revenues and
114 costs based on a reconciliation period of 12 months, such period
115 to begin on the date the surcharge tariff is approved as a
116 matter of right pursuant to subsection (3). Within 30 days after

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117 the end of each reconciliation period, the utility shall file
118 with the commission, and deliver to the Office of Public
119 Counsel, a reconciliation report that compares the actual
120 surcharge revenues received and the actual eligible costs
121 incurred by the utility during the prior period, along with the
122 sworn affirmation required by subparagraph (2)(c)1. A
123 reconciliation report filed in accordance with these
124 requirements shall be administratively approved by the
125 commission without hearing within 45 days after filing. The
126 difference between revenue and costs shall be recovered or
127 refunded, as appropriate, by the utility without hearing as an
128 automatic adjustment to the subsequent surcharge calculation.
129 Revenues in excess of system-improvement costs shall be refunded
130 with interest to customers pursuant to the commission's rule on
131 interest for water and wastewater utilities.

132 (d) Reset at zero as of the effective date of new base
133 rates that provide for prospective recovery of the costs that
134 had previously been recovered under the surcharge. Thereafter,
135 only the costs of new eligible projects that have not previously
136 been included in the base rate of the utility shall be reflected
137 in the surcharge.

138 (5) Recovery of project costs pursuant to this section does
139 not preclude such costs from being included in base rates in
140 subsequent rate proceedings. However, a project cost recovered
141 in base rates may not be recovered through a surcharge
142 established pursuant to this section.

143 (6) A project is eligible for recovery of costs through the
144 surcharge if it is:

145 (a) Completed and placed into service after the test year

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146 upon which base rates were last established by the commission
147 for the utility; and

148 (b) For the construction of nonrevenue-producing
149 improvement projects that are used for the production,
150 treatment, transmission, storage, distribution, or provision of
151 potable or recycled water to the public or for the collection,
152 transportation, or disposal of wastewater for the public. Such
153 projects may include, but are not limited to, water quality
154 improvement projects designed to achieve primary or secondary
155 water standards as determined by the Department of Environmental
156 Protection, the United States Environmental Protection Agency,
157 or any other governmental entity having similar regulatory
158 jurisdiction; wastewater quality improvement projects; main,
159 service line, and valve replacement projects; main relining and
160 rehabilitation projects; fire and flushing hydrant installation
161 and replacement projects; main extension to eliminate dead ends;
162 interconnection projects; water, wastewater, and reuse meter
163 installation and replacement projects; wastewater collection,
164 replacement, relining, and rehabilitation projects; and manhole
165 replacement and rehabilitation projects.

166 (7) Water and wastewater treatment includes production of
167 any sodium solution, excluding sodium hypochlorite, used in
168 conjunction with the treatment process, but does not include the
169 onsite manufacturing of liquid chlorine or bleach.

170 (8) Upon approval of the surcharge tariff, the utility
171 shall maintain and make available for public inspection during
172 normal business hours at each utility location or on the
173 utility's website a detailed schedule for each completed
174 project, including the plant account number and title, the

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175 category of the project, the project name and description, the
176 cost of the project in the month of closing, and the month and
177 year of closing. Notice of the availability of the schedules for
178 public inspection shall be posted in each office of the utility.

179 (9) The commission may review the prudence of all projects
180 subject to the surcharge in the utility's next base rate
181 proceeding following the commission's initial approval of the
182 surcharge pursuant to subsection (3). Revenues from such
183 surcharges are subject to refund if the commission subsequently
184 determines that the costs of a project were not prudently
185 incurred or that the project is not used and useful in the
186 public service, and any such refund shall be made pursuant to
187 the commission's rule on refunds for water and wastewater
188 utilities.

189 Section 2. This act shall take effect July 1, 2011.