

By the Committees on Communications, Energy, and Public Utilities; and Environmental Preservation and Conservation; and Senator Bennett

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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; requiring the utility to file a sworn
12 affirmation as to the accuracy of the figures and
13 calculations; providing for penalties; requiring the
14 utility to submit an annual report regarding the rate
15 of return to the commission; allowing the commission
16 to order the utility to make refunds, with interest,
17 under certain circumstances; requiring that the
18 surcharge notice be presented as a separate line item
19 on the customer's bill; specifying a limitation on the
20 surcharge amount; providing requirements for billing,
21 reconciliation, and quarterly adjustment of the
22 surcharge; specifying a limitation on the recovery of
23 project costs; providing project eligibility criteria;
24 specifying water and wastewater treatment criteria;
25 providing requirements for notice, maintenance, and
26 availability of certain records; authorizing the
27 commission to review specified projects; providing
28 that the surcharge is subject to refund under certain
29 conditions; amending s. 180.191, F.S.; providing an

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30 exemption from the rate-setting methodology used to
31 set water and wastewater utility rates for consumers
32 outside the boundaries of a municipality supplying the
33 water or wastewater services; providing an effective
34 date.

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

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38 Section 1. Section 367.0819, Florida Statutes, is created
39 to read:

40 367.0819 Recovery of costs for system improvement
41 projects.-

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

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

53 (2) A utility seeking to establish a surcharge pursuant to
54 this section must:

55 (a) Submit, for commission approval, the proposed surcharge
56 tariff establishing a formula for the calculation of rates
57 reflecting the surcharge, which rates provide for recovery of
58 depreciation and return on investment for each eligible project.

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59 The return on investment for each eligible project must be based
60 on the utility's last authorized pretax rate of return. The
61 surcharge must be calculated, applied, and recovered in
62 accordance with the utility's last authorized rate structure.
63 Until the surcharge is reset pursuant to paragraph (3)(d), the
64 total cumulative amount of the surcharge revenue recovered by
65 the utility may not exceed 8 percent of the utility's total
66 revenues, excluding revenues collected through the surcharge,
67 for the preceding calendar year.

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

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

82 2. If, within 15 months after the filing of a utility's
83 annual report required by s. 367.121, the commission finds that
84 the utility exceeded the range of its last authorized rate of
85 return on equity after the implementation of the surcharge
86 authorized by this section within the year for which the report
87 was filed, the commission may order the utility to refund, with

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88 interest, the difference to the ratepayers and adjust rates
89 accordingly. This provision does require a bond or corporate
90 undertaking in order for the utility to implement the surcharge.

91 (3) A surcharge established pursuant to this section shall
92 be:

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

98 (b) Revaluated, and if necessary adjusted, on a quarterly
99 basis to reflect the costs of eligible projects placed into
100 service. The utility shall file the supporting data to increase
101 or reduce the surcharge with the commission for each
102 reevaluation, along with a sworn affirmation required by
103 subparagraph (2) (c)1.

104 (c) Subject to an annual reconciliation of revenues and
105 costs based on a reconciliation period of 12 months, such period
106 to begin on the date the surcharge tariff is approved. Within 30
107 days after the end of each reconciliation period, the utility
108 shall file with the commission, and deliver to the Office of
109 Public Counsel, a reconciliation report that compares the actual
110 surcharge revenues received and the actual eligible costs
111 incurred by the utility during the prior period, along with the
112 sworn affirmation required by subparagraph (2) (c)1. A
113 reconciliation report filed in accordance with these
114 requirements shall be administratively approved by the
115 commission without hearing within 45 days after filing. The
116 difference between revenue and costs shall be recovered or

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117 refunded, as appropriate, by the utility without hearing as an
118 automatic adjustment to the subsequent surcharge calculation.
119 Revenues in excess of system-improvement costs shall be refunded
120 with interest to customers pursuant to the commission's rule on
121 interest for water and wastewater utilities.

122 (d) Reset at zero as of the effective date of new base
123 rates that provide for prospective recovery of the costs that
124 had previously been recovered under the surcharge. Thereafter,
125 only the costs of new eligible projects that have not previously
126 been included in the base rate of the utility shall be reflected
127 in the surcharge.

128 (4) Recovery of project costs pursuant to this section does
129 not preclude such costs from being included in base rates in
130 subsequent rate proceedings. However, a project cost recovered
131 in base rates may not be recovered through a surcharge
132 established pursuant to this section.

133 (5) A project is eligible for recovery of costs through the
134 surcharge if it is:

135 (a) Completed and placed into service after the test year
136 upon which base rates were last established by the commission
137 for the utility; and

138 (b) For the construction of nonrevenue-producing
139 improvement projects that are used for the production,
140 treatment, transmission, storage, distribution, or provision of
141 potable or recycled water to the public or for the collection,
142 transportation, or disposal of wastewater for the public. Such
143 projects may include, but are not limited to, water quality
144 improvement projects designed to achieve primary or secondary
145 water standards as determined by the Department of Environmental

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146 Protection, the United States Environmental Protection Agency,
147 or any other governmental entity having similar regulatory
148 jurisdiction; wastewater quality improvement projects; main,
149 service line, and valve replacement projects; main relining and
150 rehabilitation projects; fire and flushing hydrant installation
151 and replacement projects; main extension to eliminate dead ends;
152 interconnection projects; water, wastewater, and reuse meter
153 installation and replacement projects; wastewater collection,
154 replacement, relining, and rehabilitation projects; and manhole
155 replacement and rehabilitation projects.

156 (6) Water and wastewater treatment includes production of
157 any sodium solution, excluding sodium hypochlorite, used in
158 conjunction with the treatment process, but does not include the
159 onsite manufacturing of liquid chlorine or bleach.

160 (7) Upon approval of the surcharge tariff, the utility
161 shall maintain and make available for public inspection during
162 normal business hours at each utility location or on the
163 utility's website a detailed schedule for each completed
164 project, including the plant account number and title, the
165 category of the project, the project name and description, the
166 cost of the project in the month of closing, and the month and
167 year of closing. Notice of the availability of the schedules for
168 public inspection shall be posted in each office of the utility.

169 (8) The commission may review the prudence of all projects
170 subject to the surcharge in the utility's next base rate
171 proceeding following the commission's initial approval of the
172 surcharge pursuant to subsection (2). Revenues from such
173 surcharges are subject to refund if the commission subsequently
174 determines that the costs of a project were not prudently

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175 incurred or that the project is not used and useful in the
176 public service, and any such refund shall be made pursuant to
177 the commission's rule on refunds for water and wastewater
178 utilities.

179 Section 2. Subsection (5) is added to section 180.191,
180 Florida Statutes, to read:

181 180.191 Limitation on rates charged consumer outside city
182 limits.-

183 (5) Any water and wastewater utility customer outside the
184 boundaries of a municipality that is located within a county
185 having a population of more than 1.5 million persons, as
186 reported in the most recent United States Decennial Census, that
187 was incorporated after 2002, and that has a population in excess
188 of 80,000 persons at the time of its incorporation, is exempt
189 from the rate-setting methodology set forth in subsection (1)
190 which otherwise applies to consumers outside the boundaries of
191 the municipality that provides water or wastewater services.

192 Section 3. This act shall take effect July 1, 2011.