

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 Budget Subcommittee on General Government Appropriations

BILL: CS/CS/SB 1244

INTRODUCER: Environmental Preservation and Conservation Committee; Communications, Energy, and Public Utilities Committee; and Senator Hays and others

SUBJECT: Water and Wastewater Utilities

DATE: February 27, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	Fav/CS
2.	Hinton	Yeatman	EP	Fav/CS
3.	Howard	DeLoach	BGA	Pre-meeting
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 bill creates an 18 member Study Committee on Investor-Owned Water and Wastewater Utility Systems. Members are appointed by the President of the Senate, the Speaker of the House of Representatives, or the Governor, or are designated as members by the CS based on another position they hold, such as Secretary of Environmental Protection or the chair of the Public Service Commission. An appointing authority may remove or suspend a member appointed by it for cause, including failure to attend two or more committee meetings.

Study committee members are to serve until the work of the committee is complete and the committee is terminated, which is June 30, 2013. They serve without compensation, but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses.

The committee is to meet at times and locations determined by the chair, but must meet a minimum of four times. At least two meetings must be held in an area that is centrally located to utility customers who have recently been affected by a significant increase in water or wastewater utility rates. The public must be given the opportunity to speak at the meetings.

The Public Service Commission (PSC or commission) is to provide the staff, assistance, and facilities necessary for the committee to carry out its duties. Funding is to be paid from the Florida Public Service Regulatory Trust Fund.

The purpose of the study committee is to identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and to research possible solutions, including specified concerns and considerations.

The committee must prepare and submit a report detailing its findings and making specific legislative recommendations, including proposed legislation intended to implement its recommendations, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 15, 2013. If the committee, in its report, finds that an issue may effectively be addressed through agency rulemaking, it must submit to the appropriate agencies its report and recommendations, including proposed rules.

The CS takes effect upon becoming a law.

The CS creates an unnumbered section of law.

II. Present Situation:

In Florida, several entities are responsible for regulating water quality, water supply, and rates and service for water and wastewater utilities. The Department of Environmental Protection (DEP) has primary responsibility for regulating the quality and supply of water.¹ With respect to rates and service, the specific regulatory entities vary. For privately-owned utilities operating within a single county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC or commission) to regulate those utilities.² The PSC currently has jurisdiction over privately-owned water and wastewater utilities in 36 of the 67 counties in Florida. Regardless of whether the county has opted to regulate privately-owned utilities, the PSC has jurisdiction over all water or wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.³ Systems owned, operated, managed, or controlled by governmental authorities are not subject to PSC regulation.⁴

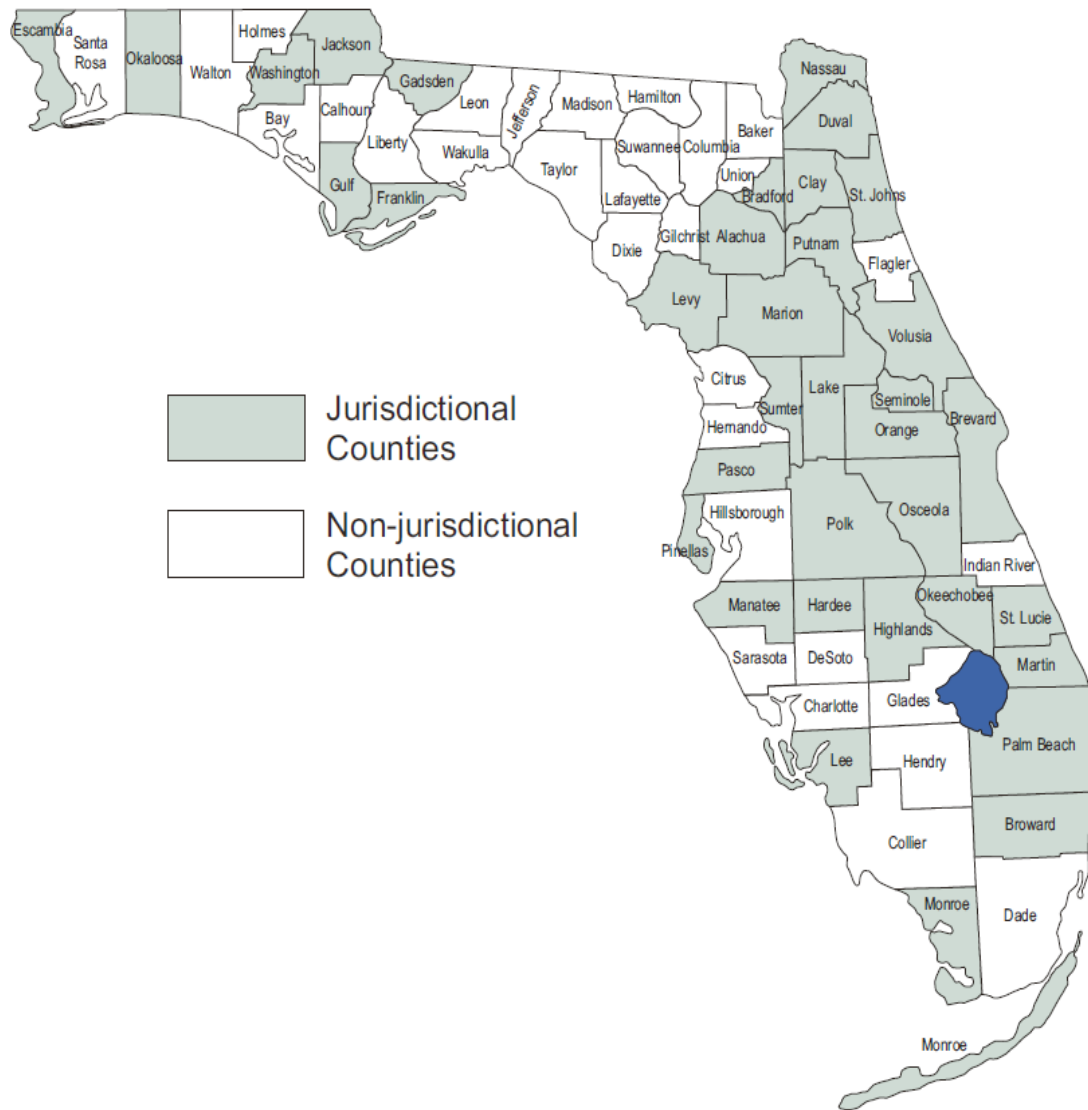
¹ Part VI, Chapter 403, F.S., and Parts I and II, Chapter 373, F.S.

² Section 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this choice only after 10 continuous years of PSC regulation.

³ *Id.*

⁴ Section 367.022(2), F.S.

The map below identifies those counties in which the PSC currently exercises jurisdiction.⁵



For regulatory purposes, the PSC classifies utilities into one of three categories based on annual operating revenues:⁶

- Class A – Operating revenues greater than \$1,000,000
- Class B – Operating revenues greater than \$200,000 but less than \$1,000,000
- Class C – Operating revenues less than \$200,000

Currently, there are 15 Class A utilities, 33 Class B utilities, and 96 Class C utilities under the PSC’s jurisdiction. These utilities serve approximately three to four percent of Florida’s population. The remaining population is served either by private utilities in non-jurisdictional

⁵ This map can be found at <http://www.psc.state.fl.us/utilities/waterwastewater/wawmap.pdf>.

⁶ Rules 25-30.110(4) and 25-30.115, F.A.C. As noted in these rules, this classification system is used by the National Association of Regulatory Utility Commissioners for publishing its system of accounts.

counties, by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits), or by wells and septic tanks. The 15 Class A utilities serve approximately 50% of the customers for all classes. In general, filing requirements, fees, penalties, and regulatory treatment are eased for Class B and C utilities.

On September 29, 2011, the PSC conducted an informal staff workshop in Orlando to address challenges facing the water and wastewater industry. By letter dated September 13, 2011, to all PSC-regulated water and wastewater utilities, the PSC invited the industry stakeholders to this workshop.⁷ The letter stated, in part:

As you are well aware, many water and wastewater utilities, particularly the small systems, struggle to achieve economies of scale, financial stability, and technical proficiency. As a result, many utilities have difficulty operating effectively and efficiently, maintaining equipment and infrastructure, complying with federal and state regulations, and providing adequate customer service at reasonable rates. This situation is likely only to worsen as infrastructure replacement needs increase and as new regulatory requirements demand increased investment in water and wastewater systems.

The letter indicated that the workshop would “provide an open forum to look at probable solutions to the many financial and environmental challenges facing utilities” and invited input and discussion concerning currently available options as well as solutions that may require regulatory or statutory changes.

Following the informal staff workshop, the PSC conducted a formal agency workshop in Tallahassee on November 3, 2011, “to discuss ways to increase efficiencies in the water and wastewater industry in order to hold and/or lower rates.”⁸ In opening remarks at the workshop, PSC Chairman Art Graham indicated that the main purpose of the workshop was to hear and address ideas to help alleviate financial strains on small water and wastewater utilities.⁹

The PSC heard discussion on several potential mechanisms to address these issues, including, among others, the creation of a legislative study commission comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives.¹⁰ This proposal, drafted by the PSC’s staff, provided that the study commission would be staffed by the PSC staff and have use of the PSC’s facilities. The proposal required that the study commission meet at least four times, with two of those meetings held in areas where utility customers had been impacted by recent rate increases. The proposal required that the study commission submit a report, including specific findings and legislative recommendations, to the Governor and the Legislature by December 31, 2012. The study commission would terminate on June 30, 2012.

⁷ http://www.psc.state.fl.us/common/controls/workshop09_29_11.pdf .

⁸ <http://www.psc.state.fl.us/library/filings/11/07437-11/07437-11.pdf> .

⁹ Workshop Transcript, pp.2-3. <http://www.psc.state.fl.us/library/filings/11/08324-11/08324-11.pdf> .

¹⁰ <http://www.psc.state.fl.us/agendas/workshops/Materials.11.03.2011.pdf> .

III. Effect of Proposed Changes:

Section 1 creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems. The study committee is to be composed of 18 members designated and appointed as follows:

Voting Members

- A member of the Senate, appointed by the President of the Senate.
- A member of the House of Representatives, appointed by the Speaker of the House of Representatives.
- Two representatives of Class A investor-owned water or wastewater utilities appointed by the Governor.
- One representative of a Class B investor-owned water or wastewater utility appointed by the Governor.
- One representative of a Class C investor-owned water or wastewater utility appointed by the Governor.
- One customer of a Class A investor-owned water or wastewater utility appointed by the Governor.
- One customer of a Class B or Class C investor-owned water or wastewater utility appointed by the Governor.
- One representative of a water management district appointed by the Governor.
- One representative of the Florida Section of the American Water Works Association appointed by the Governor.
- One representative of the Florida Rural Water Association appointed by the Governor.
- One representative of a water or wastewater system owned or operated by a municipal or county government appointed by the Governor.
- One representative of a governmental authority that is created pursuant to chapter 163, Florida Statutes, appointed by the Governor.
- The chair of a county commission that regulates investor-owned water or wastewater utility systems appointed by the Governor.
- One representative of a county health department appointed by the Governor.

Non-Voting Members

- The chair of the PSC, or a commissioner designated by the chair, who shall serve as chair of the committee.
- The Secretary of Environmental Protection or his or her designee.
- The Public Counsel or his or her designee.

An appointing authority may remove or suspend a member appointed by it for cause, including, but not limited to, failure to attend two or more meetings of the committee.

Study committee members are to serve until the work of the committee is complete and the committee is terminated. The section is to expire and the committee to terminate on June 30, 2013. A member of the study committee who is a member because of a another position held by

election, appointment, or employment who no longer serves in that position will be replaced on the study committee by the person replacing him or her in the position.

Members of the committee serve without compensation, but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses, in the performance of their duties as provided in s. 112.061, F.S.

The committee is to meet at times and locations determined by the chair, but must meet a minimum of four times. At least two meetings must be held in an area that is centrally located to utility customers who have recently been affected by a significant increase in water or wastewater utility rates. The public must be given the opportunity to speak at the meetings.

The Public Service Commission is to provide the staff, information, assistance, and facilities as are deemed necessary for the committee to carry out its duties. Funding for the committee is to be paid from the Florida Public Service Regulatory Trust Fund.

The purpose of the study committee is to identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and to research possible solutions. In addition, the committee must consider:

- The ability of a small investor-owned water or wastewater utility to achieve economies of scale when purchasing equipment, commodities, or services.
- The availability of low interest loans to a small, privately owned water or wastewater utility.
- Any tax incentives or exemptions, temporary or permanent, which are available to a small water or wastewater utility.
- The impact on customer rates if a utility purchases an existing water or wastewater utility system.
- The impact on customer rates of a utility providing service through the use of a reseller.
- Other issues that the committee identifies during its investigation.

The committee must prepare and submit a report detailing its findings and making specific legislative recommendations, including proposed legislation intended to implement its recommendations, to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 15, 2013. If the committee, in its report, finds that an issue may effectively be addressed through agency rulemaking, it must submit to the appropriate agencies its report and recommendations, including proposed rules.

Section 2 provides an effective date of upon becoming a law.

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:

Indeterminate.

C. Government Sector Impact:

The bill requires the PSC to provide staff, assistance, and facilities to support the study committee. Funding for the committee members' travel and other reimbursable expenses, as well as rental meeting facilities is also needed.

The PSC estimates \$302,281 in non-recurring Other Personal Services appropriation is needed to fund three economic analysts and one senior attorney. In addition, \$72,000 in non-recurring Expense appropriation is needed to cover member reimbursable expenses, and meeting costs.

The need for additional resources will be reviewed during the budget process.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Environmental Preservation and Conservation on February 21, 2012:

Deletes the provisions of the CS and replaces them with a revised study committee composed of 18 members.

CS by Communications, Energy, and Public Utilities on February 13, 2012:

Deletes the provisions of the original bill and replaces them with a revised study committee.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
