

**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 Communications, Energy, and Public Utilities Committee

BILL: SB 1244

INTRODUCER: Senator Hays

SUBJECT: Water and Wastewater Utilities

DATE: February 8, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	<b>Pre-meeting</b>
2.	_____	_____	EP	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill:

- prohibits the PSC from approving tiered rates that are based upon consumption by the customer;
- provides that effective July 1, 2012, any water or wastewater utility rate structure which provides for an increase in the rate based upon an increase in consumption by the customer is void and of no effect;
- requires the Public Service Commission (PSC or commission) to find a utility's rate case expense unreasonable in any rate case where the commission finds that the utility's quality of service is marginal or unsatisfactory, unless the commission finds a compelling reason to determine that all or a portion of the expense is reasonable;
- prohibits any utility that has \$1 million or more of annual operating revenues for water or wastewater operations, including its affiliated systems in this state, from recovering any more than 50 percent of the total amount of rate case expense that the PSC determines is reasonable;
- provides that a utility may recover the 4-year amortized rate case expense for only one rate case at a time;
- requires each water utility system to be designed and operated so that the water supplied to all customers is reasonably free from objectionable taste, color, odor, or sand or other sediment;
- requires each water or wastewater utility that has \$1 million or more of annual operating revenues for water or wastewater services, including all affiliated systems located in this state, to provide to each retail customer a satisfactory quality of service, with the PSC to impose a financial penalty for failure to do so;

- requires that when the PSC issues a final order of suspension or revocation of a utility's certificate of authorization, it must, within 30 days after the issuance of the order, notify the county or counties in which the utility is located of the effective date of the suspension or revocation, with the county or counties then required to assume operation and control of the utility pursuant to the procedures provided in chapter 74;
- creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems; and
- provides an effective date of July 1, 2012.

The bill substantially amends the following sections of the Florida Statutes: 367.081, 367.0816, 367.111, and 367.165.

## 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Systems owned, operated, managed, or controlled by governmental authorities are not subject to PSC regulation.<sup>4</sup>

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<sup>1</sup> Part VI, Chapter 403, F.S., and Parts I and II, Chapter 373, F.S.

<sup>2</sup> s. 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.

<sup>3</sup> *Id.*

<sup>4</sup> s. 367.022(2), F.S.



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.<sup>7</sup> 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.”<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> 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.

### III. Effect of Proposed Changes:

**Section 1** amends s. 367.081, F.S., on rates and the procedure for fixing and changing them.

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<sup>7</sup> [http://www.psc.state.fl.us/common/controls/workshop09\\_29\\_11.pdf](http://www.psc.state.fl.us/common/controls/workshop09_29_11.pdf)

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

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

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

### Present Situation

The statute currently provides that, with some exceptions, a utility that is subject to PSC regulation may only charge rates and charges that have been approved by the commission. Rates are to be just, reasonable, compensatory, and are to be set giving consideration to the value and quality of the service and the cost of providing the service.

Subsection (4) of the current statute requires the PSC to adopt a rule establishing a procedure by which a utility may change its rates without action by the commission. On or before March 31 of each year, the commission must enter an order establishing a price increase or decrease index for major categories of operating costs incurred by utilities subject to its jurisdiction reflecting the percentage of increase or decrease in such costs from the most recent 12-month historical data available. A utility may then change its rates, upward or downward, without further action by the commission, by applying the indices to the amount of the major categories of operating costs incurred by the utility during the immediately preceding calendar year, except to the extent of any disallowances or adjustments for those expenses of that utility in its most recent rate proceeding before the commission. The rules statute requires that the rules provide that, upon a finding of good cause, including inadequate service, the commission may order a utility to refrain from implementing a rate increase unless implemented under a bond or corporate undertaking in the same manner as interim rates may be implemented.

Subsection (7) of current law requires the PSC to determine the reasonableness of rate case expenses and to disallow all rate case expenses determined to be unreasonable. It prohibits payment by a consumer of any rate case expense determined to be unreasonable.

### Proposed Changes

The bill amends subsection (1) to prohibit the PSC from approving tiered rates that are based upon consumption by the customer. It amends subsection (7) to provide that in any rate case where the commission finds that a utility's quality of service is marginal or unsatisfactory, the commission must find the utility's rate case expense unreasonable unless the commission finds a compelling reason to determine that all or a portion of the expense is reasonable.

**Section 2** amends s. 367.0816, F.S., on recovery of rate case expenses.

### Present Situation

The current statute states that the amount of rate case expense determined by the commission to be reasonable and recoverable through a public utilities rate must be apportioned for recovery over a period of 4 years. At the conclusion of the recovery period, the rate of the public utility must be reduced immediately by the amount of rate case expense previously included in rates.

### Proposed Changes

The bill amends this section to prohibit any utility that has \$1 million or more of annual operating revenues for water or wastewater operations, including its affiliated systems in this state, from recovering any more than 50 percent of the total amount of rate case expense that the

commission determines is reasonable. It also provides that a utility may recover the 4-year amortized rate case expense for only one rate case at a time. Any unamortized rate case expense for a prior rate proceeding must be removed from rates before the inclusion of any additional amortized rate case expense for the most recent rate proceeding.

**Section 3** amends s. 367.111, F.S., which establishes service requirements.

#### Present Situation

The section currently requires each utility to provide service to the area described in its certificate of authorization within a reasonable time, and to provide to each person reasonably entitled thereto such safe, efficient, and sufficient service as is prescribed by relevant statute or rule. The service cannot be less safe, less efficient, or less sufficient than is consistent with the approved engineering design of the system and the reasonable and proper operation of the utility in the public interest. If the commission finds that a utility has failed to provide its customers with water or wastewater service that meets the standards promulgated by the Department of Environmental Protection or the water management districts, the commission may reduce the utility's return on equity until the standards are met.

#### Proposed Changes

The bill amends this to require each water utility system to be designed and operated so that the water supplied to all customers is reasonably free from objectionable taste, color, odor, or sand or other sediment.

It also creates a new subsection (3), which applies only to a water or wastewater utility that has \$1 million or more of annual operating revenues for water or wastewater services, including all affiliated systems located in this state. It requires each utility to provide to each retail customer a satisfactory quality of service. The PSC is required to establish specific criteria for evaluating the quality of a utility's water and wastewater service, with quality of service shall to be found satisfactory, marginal, or unsatisfactory. Criteria are to include, but aren't limited to, consideration of compliance with the chapter; relevant rules and orders of the commission, the Department of Environmental Protection, and appropriate water management districts; and the utility's approved tariff.

If the commission finds that a utility has failed to meet the criteria, it must impose a financial penalty, with penalties that increase proportionally to a decrease in the quality of service as determined according to the criteria. The maximum financial penalty cannot exceed an amount equal to 50 basis points on a utility's most recent rate of return on equity approved by the commission. Any financial penalty imposed must be refunded in a timely and equitable manner as a credit to the retail customers of the utility. The utility may not recover from its ratepayers any expense that arises from a proceeding held pursuant to this subsection.

**Section 4** amends s. 367.165, F.S., on abandonment of a utility.

#### Present Situation

The current statute states that 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. It prohibits any person owning, operating, managing, or controlling a utility from abandoning the utility without giving 60 days' notice to the county or counties in which the utility is located and to the PSC. Anyone who violates the provisions of this subsection is guilty of a misdemeanor of the first degree. Each day of abandonment constitutes a separate offense. In addition, it a violation of this chapter, and the PSC may impose upon the utility a penalty for each 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.

After receiving notice, the county, or counties acting jointly if more than one county is affected, must 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 must 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.

Chapter 74, F.S., provides for proceedings supplemental to eminent domain. These proceedings are often referred to as "quick take" proceedings as they allow the petitioner in an eminent domain action to take possession and title in advance of the entry of final judgment.<sup>11</sup> If the court finds that the petitioner is entitled to possession of the property prior to final judgment, it must enter an order requiring the petitioner to deposit in the registry of the court a sum of money that will fully secure and fully compensate the persons entitled to compensation as ultimately determined by the final judgment. The deposit cannot be less than the amount of the petitioner's estimate of value, if the petitioner be the state or any agency thereof, any county, the city, or other public body; otherwise, double the amount of petitioner's estimate of value.<sup>12</sup>

#### Proposed Changes

The bill amends the section to state that it is also the intent of the Legislature that water or wastewater service not be interrupted by the revocation or suspension of the utility's certificate of authorization. Accordingly, it requires that when the PSC issues a final order of suspension or revocation of a utility's certificate of authorization, it must, within 30 days after the issuance of the order, notify the county or counties in which the utility is located of the effective date of the suspension or revocation. The county or counties must then assume operation and control of the utility pursuant to the procedures provided in chapter 74.

**Section 5** provides that effective July 1, 2012, any rate structure of a water or wastewater utility which provides for an increase in the rate based upon an increase in consumption by the customer is void and of no effect.

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<sup>11</sup> s. 74.011, F.S.

<sup>12</sup> s. 74.051(2), F.S.

**Section 6** creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems. It is to consist of 17 members designated and appointed as follows:

- Two Senators appointed by the President of the Senate, one of whom shall be appointed as chair by the President of the Senate.
- Two Representatives appointed by the Speaker of the House of Representatives.
- The Secretary of Environmental Protection or his or her designee, who shall be a nonvoting member of the committee.
- The chair of the Public Service Commission or his or her designee, who shall be a nonvoting member of the committee.
- A representative of a water management district appointed by the Governor.
- A representative of a water or wastewater system owned or operated by a municipal government appointed by the Governor.
- A representative of a water or wastewater system owned or operated by a county government appointed by the Governor.
- The chair of a county commission that regulates investor-owned water or wastewater utility systems, who shall be a nonvoting member of the committee.
- A representative of a county health department appointed by the Governor, who shall be a nonvoting member of the committee.
- A representative of the Florida Rural Water Association appointed by the Governor.
- A representative of a small investor-owned water or wastewater utility appointed by the Governor.
- A representative of a large investor-owned water or wastewater utility appointed by the Governor.
- The Public Counsel or his or her designee.
- A customer of a Class C water or wastewater utility appointed by the Governor.
- A representative of a government authority that was created pursuant to chapter 367, Florida Statutes, appointed by the Governor.

The 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.

The members are to serve until the work of the committee is complete and the committee is terminated. If a person is a member of the study committee based on holding a position to which he or she was elected, appointed, or employed, and he or she leaves that position, that member is to be replaced by the individual who replaces him or her in the position.

Study committee members are to serve without compensation, but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses, in the performance of their duties.

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

The committee is to shall meet at the time and location determined by the chair, except that the committee 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 meeting.

The purpose of the 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 and 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, by December 31, 2012, to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The committee is to terminate on June 30, 2013.

**Section 7** provides an effective date of July 1, 2012.

#### **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 Public Service Commission to provide staff, assistance, and facilities to support the study committee. Further, funding for the committee, including funding for travel and other reimbursable expenses of members and rental of necessary meeting facilities, will be paid from the Florida Public Service Regulatory Trust Fund.

**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.)

None.

**B. Amendments:**

None.