

By Senator Hays

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1                   A bill to be entitled  
2           An act relating to water and wastewater utilities;  
3           amending s. 367.081, F.S.; prohibiting the Public  
4           Service Commission from approving tiered rates that  
5           are based upon consumption by the customer; requiring  
6           the commission to find a utility's rate case expense  
7           unreasonable if the utility's quality of service is  
8           marginal or unsatisfactory; providing an exception;  
9           amending s. 367.0816, F.S.; limiting the amount that  
10          certain utilities may recover as rate case expense to  
11          50 percent of the total amount; limiting the recovery  
12          of rate case expense to one case at a time; amending  
13          s. 367.111, F.S.; requiring that systems be designed  
14          and operated to meet certain standards; requiring the  
15          commission to establish specific criteria for the  
16          evaluation of water and wastewater service; providing  
17          guidelines; requiring the commission to impose certain  
18          financial penalties against a utility that fails to  
19          meet the criteria; providing for calculating the  
20          penalty; limiting the application of the standards to  
21          water and wastewater utilities that have \$1 million or  
22          more of annual operating revenues; authorizing the  
23          commission to adopt rules; amending s. 367.165, F.S.;  
24          providing for the continuation of service if a  
25          utility's certificate of authority is revoked or  
26          suspended; requiring the commission to notify the  
27          county or counties in which a utility is located that  
28          its certificate of authority is revoked or suspended;  
29          requiring the county or counties to assume operation

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30 and control; providing that any rate structure of a  
31 water or wastewater utility which increases the rate  
32 based upon increased consumption by the customer is  
33 void and of no effect; creating the Study Committee on  
34 Investor-Owned Water and Wastewater Utility Systems;  
35 providing for membership and terms of service;  
36 prohibiting compensation of the members; providing for  
37 reimbursement of the members for certain expenses;  
38 providing for removal or suspension of members by the  
39 appointing authority; requiring the Public Service  
40 Commission to provide staff, information, assistance,  
41 and facilities that are deemed necessary for the  
42 committee to perform its duties; providing for funding  
43 from the Florida Public Service Regulatory Trust Fund;  
44 providing duties for the committee; providing for  
45 public meetings; requiring the committee to report to  
46 the Governor and Legislature its findings and make  
47 recommendation for legislative changes; providing for  
48 future termination of the committee; providing an  
49 effective date.

50  
51 Be It Enacted by the Legislature of the State of Florida:

52  
53 Section 1. Subsections (1) and (7) of section 367.081,  
54 Florida Statutes, are amended to read:

55 367.081 Rates; procedure for fixing and changing.—

56 (1) Except as provided in subsection (4) or subsection (6),  
57 a utility may ~~only~~ charge only rates and charges that have been  
58 approved by the commission. However, the commission may not

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59 approve tiered rates that are based upon consumption by the  
60 customer.

61 (7) The commission shall determine the reasonableness of  
62 rate case expenses and shall disallow all rate case expenses  
63 determined to be unreasonable. No rate case expense determined  
64 to be unreasonable shall be paid by a consumer. In determining  
65 the reasonable level of rate case expense, the commission shall  
66 consider the extent to which a utility has utilized or failed to  
67 utilize the provisions of paragraph (4) (a) or paragraph (4) (b)  
68 and such other criteria as the commission establishes ~~it may~~  
69 ~~establish~~ by rule. In a rate case proceeding, if the commission  
70 finds that a utility's quality of service is marginal or  
71 unsatisfactory, the commission shall find the utility's rate  
72 case expense unreasonable unless the commission finds a  
73 compelling reason to determine that all or a portion of the  
74 expense is reasonable.

75 Section 2. Section 367.0816, Florida Statutes, is amended  
76 to read:

77 367.0816 Recovery of rate case expenses.—

78 (1) The amount of rate case expense determined by the  
79 commission to be reasonable pursuant to s. 367.081 ~~the~~  
80 ~~provisions of this chapter to be recovered through a public~~  
81 ~~utilities rate~~ shall be apportioned for recovery through the  
82 utility's rates over a period of 4 years. At the conclusion of  
83 the recovery period, the rate of the public utility shall be  
84 reduced immediately by the amount of rate case expense  
85 previously included in rates. A utility that has \$1 million or  
86 more of annual operating revenues for water or wastewater  
87 operations, including its affiliated systems in this state, may

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88 recover no more than 50 percent of the total amount of rate case  
89 expense that the commission determines is reasonable.

90 (2) A utility may recover the 4-year amortized rate case  
91 expense for only one rate case at a time. Any unamortized rate  
92 case expense for a prior rate proceeding must be removed from  
93 rates before the inclusion of any additional amortized rate case  
94 expense for the most recent rate proceeding.

95 Section 3. Subsection (2) of section 367.111, Florida  
96 Statutes, is amended, and subsection (3) is added to that  
97 section, to read:

98 367.111 Service.—

99 (2) Each utility shall provide to each customer ~~person~~  
100 ~~reasonably entitled thereto~~ such safe, efficient, and sufficient  
101 service as ~~is~~ prescribed by part VI of chapter 403 and parts I  
102 and II of chapter 373, or rules adopted pursuant to those parts;  
103 however, the thereto; but such service may shall not be less  
104 safe, less efficient, or less sufficient than is consistent with  
105 the approved engineering design of the system and the reasonable  
106 and proper operation of the utility in the public interest. Each  
107 water utility system shall be designed and operated so that the  
108 water supplied to all customers is reasonably free from  
109 objectionable taste, color, odor, or sand or other sediment. If  
110 the commission finds that a utility has failed to provide its  
111 customers with water or wastewater service that meets the  
112 standards adopted ~~promulgated~~ by the Department of Environmental  
113 Protection or the water management districts, or required by  
114 this section, the commission may reduce the utility's return on  
115 equity until the standards are met.

116 (3) Each utility shall provide to each retail customer a

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117 satisfactory quality of service. The commission shall establish  
118 specific criteria for evaluating the quality of a utility's  
119 water and wastewater service.

120 (a) Quality of service shall be deemed satisfactory,  
121 marginal, or unsatisfactory.

122 (b) Criteria shall include, but are not limited to,  
123 consideration of compliance with:

124 1. This chapter;

125 2. Relevant rules and orders of the commission, the  
126 Department of Environmental Protection, and appropriate water  
127 management districts; and

128 3. The utility's approved tariff.

129 (c) If the commission finds that a utility has failed to  
130 meet the criteria, the commission shall impose a financial  
131 penalty against the utility. The commission shall establish by  
132 rule penalties that increase proportionally to a decrease in the  
133 quality of service as determined according to the criteria.

134 1. The maximum financial penalty may not exceed an amount  
135 equal to 50 basis points on a utility's most recent rate of  
136 return on equity approved by the commission.

137 2. Any financial penalty imposed shall be refunded in a  
138 timely and equitable manner as a credit to the retail customers  
139 of the utility.

140 (d) This subsection applies to a water or wastewater  
141 utility that has \$1 million or more of annual operating revenues  
142 for water or wastewater services, including all affiliated  
143 systems located in this state.

144 (e) The utility must establish that it provides  
145 satisfactory quality of service, and failure to do so may result

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146 in a penalty. The utility may not recover from its ratepayers  
147 any expense that arises from a proceeding held pursuant to this  
148 subsection.

149 (f) The commission shall adopt rules to administer this  
150 subsection.

151 Section 4. Section 367.165, Florida Statutes, is amended to  
152 read:

153 367.165 Continuity of service in instances of revocation or  
154 suspension of certificate; abandonment.—It is the intent of the  
155 Legislature that water or wastewater service to the customers of  
156 a utility not be interrupted by the revocation or suspension of  
157 the utility's certificate of authorization or the abandonment or  
158 placement into receivership of the utility. ~~To that end:~~

159 (1) Within 30 days after the issuance of a final order of  
160 suspension or revocation of a utility's certificate of  
161 authorization, the commission shall notify the county or  
162 counties in which the utility is located of the effective date  
163 of the suspension or revocation. The county or counties shall  
164 assume operation and control of the utility pursuant to the  
165 procedures provided in chapter 74.

166 (2) (a) ~~(1)~~ A ~~No~~ person, lessee, trustee, or receiver owning,  
167 operating, managing, or controlling a utility may not shall  
168 abandon the utility without giving 60 days' notice to the county  
169 or counties in which the utility is located and to the  
170 commission. Anyone who violates ~~the provisions of this paragraph~~  
171 commits ~~subsection is guilty of~~ a misdemeanor of the first  
172 degree, punishable as provided in s. 775.082 or s. 775.083. Each  
173 day of ~~such~~ abandonment constitutes a separate offense. In  
174 addition, ~~the such~~ act of abandonment is a violation of this

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175 chapter, and the commission may impose upon the utility a  
176 penalty for each such offense of not more than \$5,000 or may  
177 amend, suspend, or revoke its certificate of authorization.~~†~~  
178 Each day of ~~such~~ abandonment without prior notice constitutes a  
179 separate offense.

180 (b)~~(2)~~ After receiving ~~such~~ notice, the county, or counties  
181 acting jointly if more than one county is affected, shall  
182 petition the circuit court of the judicial circuit in which the  
183 ~~such~~ utility is domiciled to appoint a receiver, which may be  
184 the governing body of a political subdivision or any other  
185 person deemed appropriate. The receiver shall operate the  
186 utility from the date of abandonment until ~~such time as~~ the  
187 receiver disposes of the property of the utility in a manner  
188 designed to continue the efficient and effective operation of  
189 utility service.

190 (c)~~(3)~~ The notification to the commission under paragraph  
191 (a) ~~subsection (1)~~ is sufficient cause for revocation,  
192 suspension, or amendment of the certificate of authorization of  
193 the utility as of the date of abandonment. The receiver  
194 operating the ~~such~~ utility shall ~~be considered to~~ hold a  
195 temporary authorization from the commission, and the approved  
196 rates of the utility are ~~shall be deemed to be~~ the interim rates  
197 of the receiver until modified by the commission.

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

202 Section 6. Study Committee on Investor-Owned Water and  
203 Wastewater Utility Systems.

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204       (1) There is created a Study Committee on Investor-Owned  
205 Water and Wastewater Utility Systems, which shall be composed of  
206 17 members designated and appointed as follows:

207       (a) Two Senators appointed by the President of the Senate,  
208 one of whom shall be appointed as chair by the President of the  
209 Senate.

210       (b) Two Representatives appointed by the Speaker of the  
211 House of Representatives.

212       (c) The Secretary of Environmental Protection or his or her  
213 designee, who shall be a nonvoting member of the committee.

214       (d) The chair of the Public Service Commission or his or  
215 her designee, who shall be a nonvoting member of the committee.

216       (e) A representative of a water management district  
217 appointed by the Governor.

218       (f) A representative of a water or wastewater system owned  
219 or operated by a municipal government appointed by the Governor.

220       (g) A representative of a water or wastewater system owned  
221 or operated by a county government appointed by the Governor.

222       (h) The chair of a county commission that regulates  
223 inventor-owned water or wastewater utility systems, who shall be  
224 a nonvoting member of the committee.

225       (i) A representative of a county health department  
226 appointed by the Governor, who shall be a nonvoting member of  
227 the committee.

228       (j) A representative of the Florida Rural Water Association  
229 appointed by the Governor.

230       (k) A representative of a small investor-owned water or  
231 wastewater utility appointed by the Governor.

232       (l) A representative of a large investor-owned water or



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233 wastewater utility appointed by the Governor.

234 (m) The Public Counsel or his or her designee.

235 (n) A customer of a Class C water or wastewater utility  
236 appointed by the Governor.

237 (o) A representative of a government authority that was  
238 created pursuant to chapter 367, Florida Statutes, appointed by  
239 the Governor.

240 (2) The members shall serve until the work of the committee  
241 is complete and the committee is terminated, except that if a  
242 member no longer serves in the position required for  
243 appointment, the member shall be replaced by the individual who  
244 serves in such position.

245 (3) Members of the committee shall serve without  
246 compensation, but are entitled to reimbursement for all  
247 reasonable and necessary expenses, including travel expenses, in  
248 the performance of their duties as provided in s. 112.061,  
249 Florida Statutes.

250 (4) The appointing authority may remove or suspend a member  
251 appointed by it for cause, including, but not limited to,  
252 failure to attend two or more meetings of the committee.

253 (5) The Public Service Commission shall provide the staff,  
254 information, assistance, and facilities as are deemed necessary  
255 for the committee to carry out its duties under this section.  
256 Funding for the committee shall be paid from the Florida Public  
257 Service Regulatory Trust Fund.

258 (6) The committee shall identify issues of concern of  
259 investor-owned water and wastewater utility systems,  
260 particularly small systems, and their customers and research  
261 possible solutions. In addition, the committee shall consider:

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262 (a) The ability of a small investor-owned water and  
263 wastewater utility to achieve economies of scale when purchasing  
264 equipment, commodities, or services.

265 (b) The availability of low interest loans to a small,  
266 privately owned water or wastewater utility.

267 (c) Any tax incentives or exemptions, temporary or  
268 permanent, which are available to a small water or wastewater  
269 utility.

270 (d) The impact on customer rates if a utility purchases an  
271 existing water or wastewater utility system.

272 (e) The impact on customer rates of a utility providing  
273 service through the use of a reseller.

274 (f) Other issues that the committee identifies during its  
275 investigation.

276 (7) The committee shall meet at the time and location as  
277 the chair determines, except that the committee shall meet a  
278 minimum of four times. At least two meetings must be held in an  
279 area that is centrally located to utility customers who have  
280 recently been affected by a significant increase in water or  
281 wastewater utility rates. The public shall be given the  
282 opportunity to speak at the meeting.

283 (8) By December 31, 2012, the committee shall prepare and  
284 submit to the Governor, the President of the Senate, and the  
285 Speaker of the House of Representatives a report detailing its  
286 findings pursuant to subsection (6) and making specific  
287 legislative recommendations.

288 (9) This section expires and the committee terminates June  
289 30, 2013.

290 Section 7. This act shall take effect July 1, 2012.