

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1379 Water and Wastewater Utilities

**SPONSOR(S):** State Affairs Committee, Energy & Utilities Subcommittee and Brodeur

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1244

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	15 Y, 0 N, As CS	Keating	Collins
2) State Affairs Committee	15 Y, 0 N, As CS	Keating	Hamby

### SUMMARY ANALYSIS

In 2011, the Public Service Commission (PSC) conducted workshops to address challenges facing the water and wastewater industry, with a focus on small water and wastewater utility systems that struggle to achieve economies of scale, financial stability, and technical proficiency. 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.

The bill creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems (study committee or committee). The bill requires this study committee to “identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and research possible solutions.” In addition, the bill requires the committee to 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 is composed of 18 Florida residents and is comprised of legislators, regulators, industry representatives, local government representatives, and customer representatives.

The bill requires the study committee, by February 15, 2013, to prepare and submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and any appropriate agencies, a report detailing its findings and making specific legislative and rulemaking recommendations. The bill provides for termination of the committee on June 30, 2013.

The bill has no impact on state or local revenues or on local expenditures. 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.

# FULL ANALYSIS

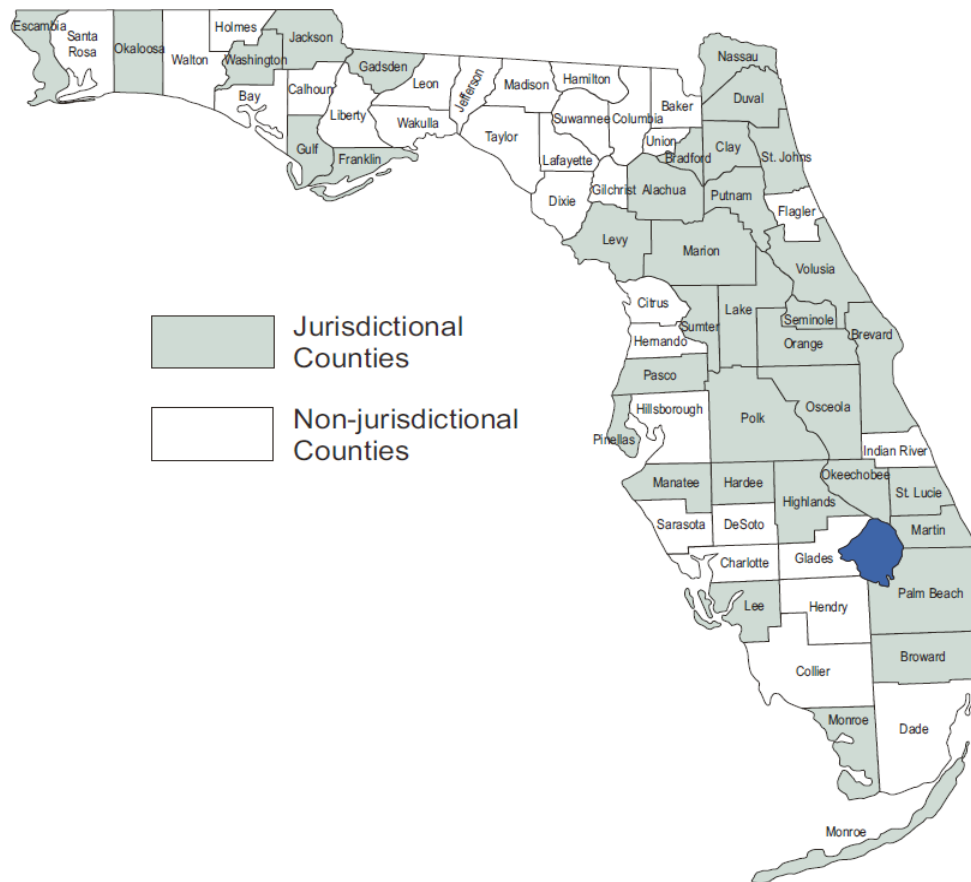
## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### 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) 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 transverse 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>

The map below identifies those counties in which the PSC currently exercises jurisdiction and can be found at <http://www.psc.state.fl.us/utilities/waterwastewater/wawmap.pdf>.



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

<sup>2</sup> 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.

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

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

For regulatory purposes, the PSC classifies utilities into one of three categories based on annual operating revenues.<sup>5</sup>

- 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 approximately 15 Class A utilities, 33 Class B utilities, and 96 Class C utilities under the PSC's jurisdiction. These utilities serve approximately 3 to 4 percent of Florida's population. The remaining population is served either by private utilities in non-jurisdictional counties, by statutorily exempt utilities (such as municipal utilities, cooperatives, and non-profits), or by wells and septic tanks. The 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>6</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>7</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>8</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>9</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.

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<sup>5</sup> 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.

<sup>6</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>7</sup> <http://www.psc.state.fl.us/library/filings/11/07437-11/07437-11.pdf>

<sup>8</sup> Workshop Transcript, pp.2-3. <http://www.psc.state.fl.us/library/filings/11/08324-11/08324-11.pdf>

<sup>9</sup> <http://www.psc.state.fl.us/agendas/workshops/Materials.11.03.2011.pdf>

## Effect of Proposed Changes

The bill creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems (study committee or committee). The committee consists of 18 members, all of whom must be Florida residents and 15 of which are voting members. The voting members consist of:

- One Senator appointed by the President of the Senate.
- One Representative 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 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 was 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.

The three remaining, nonvoting members are:

- The chair of the Public Service Commission, or a commissioner designated by the chair of the PSC, 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.

The appointing authority may remove or suspend a member appointed by it for cause, including failure to attend two or more committee meetings.

The bill provides that the study committee must “identify issues of concern of investor-owned water and wastewater utility systems, particularly small systems, and their customers and research possible solutions.” In addition, the bill requires the committee to 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 bill requires that the study committee shall meet a minimum of four times at a time and place determined by the chair. At least two meetings must be held in an area “centrally located to utility

customers who have recently been affected by a significant increase in water or wastewater utility rates.” The bill provides that the public shall be given the opportunity to speak at these meetings.

The bill requires the PSC to provide staff, information, assistance, and facilities as deemed necessary by the study committee to perform its duties. Funding for the committee will come from the Florida Public Service Regulatory Trust Fund. Members of the committee will not be compensated but are entitled to reimbursement for all reasonable and necessary expenses, including travel expenses.

The bill requires the study committee, by February 15, 2013, to prepare and submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, a report detailing its findings and making specific legislative recommendations, including proposed legislation. If the committee finds that an issue may effectively be addressed through agency rulemaking, the committee must submit its report and recommendations, including proposed rules, to the appropriate agencies. The bill provides for termination of the committee on June 30, 2013.

**B. SECTION DIRECTORY:**

**Section 1.** Creates the Study Committee on Investor-Owned Water and Wastewater Utility Systems.

**Section 2.** Provides an effective date of upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

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.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Energy & Utilities Subcommittee adopted a proposed committee substitute for HB 1379. HB 1379 includes provisions that prohibit tiered utility rates based on customer consumption, address recovery of utility rate case expenses, require a county to take operational control of a utility system whose certificate is revoked or suspended, establish a mechanism for penalizing utilities that fail to meet certain service quality standards, and establish a study committee to address issues related to investor-owned water and wastewater utilities. The proposed committee substitute removes all of these provisions except for the establishment of a study committee. The Energy & Utilities Subcommittee adopted two amendments to the proposed committee substitute. These amendments, which were reflected in a committee substitute for the bill, do the following:

- Identify the Governor as the authority responsible for appointing to the study committee a chair of a county commission that regulates investor-owned water or wastewater utility systems.
- Require the study committee to prepare and submit its report by February 15, 2013.

On February 16, 2012, the State Affairs Committee adopted an amendment to CS/HB 1379, with an amendment to the amendment, to modify the membership of the study committee so that it is composed of 18 Florida residents. The amendment, which is reflected in the committee substitute for the bill that is the subject of this analysis, also does the following:

- Reduces the number of Senators and Representatives on the committee from two to one from each chamber.
- Increases the number of investor-owned utility representatives on the committee from two to four.
- Adds one customer of a Class A investor-owned utility to the committee.
- Adds a representative of the Florida Section of the American Water Works Association to the committee.
- Reduces the number of local government utility representatives on the committee from two to one.
- Provides that the chair of the PSC, or a commissioner designated by the chair of the PSC, shall serve as the chair of the study committee.
- Provides that the Public Counsel is a nonvoting member.
- Provides that the chair of a county commission that regulates investor-owned water or wastewater utility systems is a voting member.
- Provides that the representative of a county health department is a voting member.