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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 by rule a mechanism by which
16 monetary penalties are imposed on utility systems that
17 fail to provide sufficient quality of service;
18 providing rule requirements; providing that such
19 systems have the burden of proof in certain
20 proceedings; prohibiting a utility from recovering
21 certain expenses from ratepayers; amending s. 367.165,
22 F.S.; providing for the continuation of service if a
23 utility's certificate of authority is revoked or
24 suspended; requiring the commission to notify the
25 county or counties in which a utility is located that
26 its certificate of authority is revoked or suspended;
27 requiring the county or counties to assume operation
28 and control; providing that any rate structure of a

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

48
 49 Be It Enacted by the Legislature of the State of Florida:

50
 51 Section 1. Subsections (1) and (7) of section 367.081,
 52 Florida Statutes, are amended to read:

53 367.081 Rates; procedure for fixing and changing.—

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

57 approve tiered rates that are based upon consumption by the
 58 customer.

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

73 Section 2. Section 367.0816, Florida Statutes, is amended
 74 to read:

75 367.0816 Recovery of rate case expenses.—

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

85 operations, including its affiliated systems in this state, may
 86 recover no more than 50 percent of the total amount of rate case
 87 expense that the commission determines is reasonable.

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

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

96 367.111 Service.—

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

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113 equity until the standards are met.

114 (3) (a) The commission shall establish by rule a mechanism,
115 applied on an annual basis, by which a monetary penalty is
116 imposed on any utility system that fails to provide sufficient
117 quality of service to its retail customers. The rule shall:

118 1. Measure each utility system's quality of service based
119 on the rate of jurisdictional customer complaints it receives
120 per every 100 retail customers of the system.

121 2. Exclude those customer complaints that:

122 a. Solely concern matters outside the commission's
123 jurisdiction.

124 b. Solely concern proposed rates and charges.

125 c. Solely concern commission-approved rates and charges.

126 d. Duplicate a prior complaint made by the same customer.

127 e. Are found by the commission to be without merit.

128 f. Are voluntarily withdrawn by the customer.

129 3. Provide for a monetary penalty, in an amount no more
130 than the equivalent of 50 basis points on the utility's
131 authorized rate of return on equity for the period that the
132 customer complaint rate was calculated, to be imposed on each
133 utility system whose customer complaint rate exceeds the mean
134 customer complaint rate for all other utility systems, excluding
135 other systems operated by the same utility, by a 10 percent
136 level of statistical significance. Subject to the 50 basis point
137 limit, the commission may establish penalty levels that increase
138 as customer complaint rates exceed this level of statistical
139 significance.

140 4. Provide for a monetary penalty, in an amount no more

141 than the equivalent of 100 basis points on the utility's
142 authorized rate of return on equity for the period that the
143 customer complaint rate was calculated, to be imposed on each
144 affected utility system where the customer complaint rates of
145 more than one system operated by the same utility exceed the
146 mean customer complaint rate for all other utility systems,
147 excluding other systems operated by the same utility, by a 10
148 percent level of statistical significance. Subject to the 100
149 basis point limit, the commission may establish penalty levels
150 that increase as customer complaint rates exceed this level of
151 statistical significance.

152 5. Establish a means to determine an appropriate monetary
153 penalty to be imposed on a utility system that has an equity
154 ratio of less than 30 percent or that does not utilize equity
155 financing. This mechanism should be designed to result in
156 monetary penalties that, as closely as possible, equate to the
157 penalties that would be imposed pursuant to subparagraphs 3. and
158 4. for other utility systems.

159 6. Credit the proceeds of any monetary penalty imposed
160 under the rule to the ratepayers of the affected utility system
161 or systems in a timely and equitable manner.

162 7. Provide that each utility system with a customer
163 complaint rate that is found to be excessive pursuant to the
164 rule must show cause why it should not be penalized.

165 (b) A utility system that is required to show cause why it
166 should not be penalized pursuant to the rule has the burden of
167 proof to establish that it should not be penalized. A utility
168 may not recover from its ratepayers any expense arising from a

169 proceeding held pursuant to this subsection.

170 Section 4. Section 367.165, Florida Statutes, is amended
 171 to read:

172 367.165 Continuity of service in instances of revocation
 173 or suspension of certificate; abandonment.—It is the intent of
 174 the Legislature that water or wastewater service to the
 175 customers of a utility not be interrupted by the revocation or
 176 suspension of the utility's certificate of authorization or the
 177 abandonment or placement into receivership of the utility. ~~To~~
 178 ~~that end:~~

179 (1) Within 30 days after the issuance of a final order of
 180 suspension or revocation of a utility's certificate of
 181 authorization, the commission shall notify the county or
 182 counties in which the utility is located of the effective date
 183 of the suspension or revocation. The county or counties shall
 184 assume operation and control of the utility pursuant to the
 185 procedures provided in chapter 74.

186 (2) (a) (1) ~~A~~ No person, lessee, trustee, or receiver
 187 owning, operating, managing, or controlling a utility may not
 188 ~~shall~~ abandon the utility without giving 60 days' notice to the
 189 county or counties in which the utility is located and to the
 190 commission. Anyone who violates ~~the provisions of this paragraph~~
 191 commits subsection is guilty of a misdemeanor of the first
 192 degree, punishable as provided in s. 775.082 or s. 775.083. Each
 193 day of ~~such~~ abandonment constitutes a separate offense. In
 194 addition, the such act of abandonment is a violation of this
 195 chapter, and the commission may impose upon the utility a
 196 penalty for each such offense of not more than \$5,000 or may

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197 amend, suspend, or revoke its certificate of authorization.~~†~~
 198 Each day of ~~such~~ abandonment without prior notice constitutes a
 199 separate offense.

200 (b)~~(2)~~ After receiving ~~such~~ notice, the county, or
 201 counties acting jointly if more than one county is affected,
 202 shall petition the circuit court of the judicial circuit in
 203 which the ~~such~~ utility is domiciled to appoint a receiver, which
 204 may be the governing body of a political subdivision or any
 205 other person deemed appropriate. The receiver shall operate the
 206 utility from the date of abandonment until ~~such time as~~ the
 207 receiver disposes of the property of the utility in a manner
 208 designed to continue the efficient and effective operation of
 209 utility service.

210 (c)~~(3)~~ The notification to the commission under paragraph
 211 (a) ~~subsection (1)~~ is sufficient cause for revocation,
 212 suspension, or amendment of the certificate of authorization of
 213 the utility as of the date of abandonment. The receiver
 214 operating the ~~such~~ utility shall ~~be considered to~~ hold a
 215 temporary authorization from the commission, and the approved
 216 rates of the utility are ~~shall be deemed to be~~ the interim rates
 217 of the receiver until modified by the commission.

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

222 Section 6. Study Committee on Investor-Owned Water and
 223 Wastewater Utility Systems.-

224 (1) There is created a Study Committee on Investor-Owned

225 Water and Wastewater Utility Systems, which shall be composed of
 226 17 members designated and appointed as follows:

227 (a) Two Senators appointed by the President of the Senate,
 228 one of whom shall be appointed as chair by the President of the
 229 Senate.

230 (b) Two Representatives appointed by the Speaker of the
 231 House of Representatives.

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

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

236 (e) A representative of a water management district
 237 appointed by the Governor.

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

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

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

245 (i) A representative of a county health department
 246 appointed by the Governor, who shall be a nonvoting member of
 247 the committee.

248 (j) A representative of the Florida Rural Water
 249 Association appointed by the Governor.

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

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

253 wastewater utility appointed by the Governor.
 254 (m) The Public Counsel or his or her designee.
 255 (n) A customer of a Class C water or wastewater utility
 256 appointed by the Governor.
 257 (o) A representative of a government authority that was
 258 created pursuant to chapter 367, Florida Statutes, appointed by
 259 the Governor.
 260 (2) The members shall serve until the work of the
 261 committee is complete and the committee is terminated, except
 262 that if a member no longer serves in the position required for
 263 appointment, the member shall be replaced by the individual who
 264 serves in such position.
 265 (3) Members of the committee shall serve without
 266 compensation, but are entitled to reimbursement for all
 267 reasonable and necessary expenses, including travel expenses, in
 268 the performance of their duties as provided in s. 112.061,
 269 Florida Statutes.
 270 (4) The appointing authority may remove or suspend a
 271 member appointed by it for cause, including, but not limited to,
 272 failure to attend two or more meetings of the committee.
 273 (5) The Public Service Commission shall provide the staff,
 274 information, assistance, and facilities as are deemed necessary
 275 for the committee to carry out its duties under this section.
 276 Funding for the committee shall be paid from the Florida Public
 277 Service Regulatory Trust Fund.
 278 (6) The committee shall identify issues of concern of
 279 investor-owned water and wastewater utility systems,
 280 particularly small systems, and their customers and research

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281 possible solutions. In addition, the committee shall consider:

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

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

287 (c) Any tax incentives or exemptions, temporary or
288 permanent, which are available to a small water or wastewater
289 utility.

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

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

294 (f) Other issues that the committee identifies during its
295 investigation.

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

303 (8) By December 31, 2012, the committee shall prepare and
304 submit to the Governor, the President of the Senate, and the
305 Speaker of the House of Representatives a report detailing its
306 findings pursuant to subsection (6) and making specific
307 legislative recommendations.

308 (9) This section expires and the committee terminates June

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309 | 30, 2013.

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