



382554

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2014	.	
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The Committee on Community Affairs (Simpson) recommended the following:

**Senate Amendment (with title amendment)**

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Delete everything after the enacting clause  
and insert:

Section 1. Section 367.072, Florida Statutes, is created to  
read:



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9           367.072 Petition to revoke certificate of authorization.-

10 The Legislature finds that it is in the public interest that  
11 water and wastewater service be of good quality and consistent  
12 with the standards set forth in this chapter. Therefore, a  
13 utility's certificate of authorization may be revoked if, after  
14 its customers file a petition in accordance with this section,  
15 the commission finds that revocation is in the best interest of  
16 the customers.

17           (1) Customers must file a notice of intent with the  
18 commission before filing a petition. Within 10 days after  
19 receipt of a notice of intent, the commission staff shall:

20           (a) Notify the applicable utility that its customers have  
21 filed a notice of intent; and

22           (b) Send the customers instructions detailing the required  
23 format and content of the petition and the subsequent process  
24 the commission must follow.

25           (2) Within 90 days after receipt of such instructions, the  
26 customers must file a petition that, for the purpose of  
27 determining whether a utility is providing satisfactory water  
28 quality or wastewater service, must:

29           (a) State with specificity each issue that the customers  
30 have with the water quality or wastewater service, each time the  
31 problem was reported to the utility, and how long each issue has  
32 existed; and

33           (b) Be signed by at least 65 percent of a utility's  
34 customers within a system. The term "customer" means an  
35 individual who owns or rents property that is serviced by a  
36 single meter or an individual whose name appears on the bill for  
37 a master meter. Only one signature for each service address may



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38 be included on the petition. An individual whose name appears on  
39 the bill for a master meter may sign a petition if at least 65  
40 percent of the heads of the households served by the master  
41 meter, such as tenants or unit owners, support the petition, in  
42 which case documentation of such support must be included with  
43 the petition.

44 (3) The commission shall review the petition and, within 10  
45 days after receipt, notify the customers whether the petition is  
46 sufficient or whether additional information is required. If  
47 additional information is required, the customers must file a  
48 cured petition within 30 days after receipt of the notification.  
49 If the customers fail to file the petition in accordance with  
50 this subsection, the commission shall dismiss the petition, and  
51 the customers may not file another petition for 1 year after the  
52 date of dismissal.

53 (4) If the petition is in compliance with this section and  
54 the issues identified within the petition support a reasonable  
55 likelihood that the water or wastewater utility is failing to  
56 provide quality water or wastewater service, a docket shall be  
57 opened. Once opened, the utility may not file for a rate case  
58 until the docket is closed.

59 (5) A copy of the petition and written notification  
60 regarding the prohibition against filing a rate case while the  
61 docket remains open must be provided to the utility. The utility  
62 shall submit a response to the commission addressing the issues  
63 identified within the petition and explaining whether it is  
64 providing quality water or wastewater service using the  
65 following criteria:

66 (a) Federal and state primary water and wastewater



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67 standards or secondary water quality or wastewater service  
68 standards provided in s. 367.0812; and

69 (b) The relationship between the utility and its customers,  
70 including each complaint received regarding service quality, the  
71 length of time each customer has been complaining about service,  
72 the resolution of each complaint, and the time it has taken to  
73 address such complaints.

74 (6) The commission shall evaluate the issues identified  
75 within the petition, the utility's response as to whether it is  
76 providing quality water or wastewater service, and any other  
77 factor the commission deems relevant.

78 (7) Notwithstanding s. 367.045 and based upon its  
79 evaluation, the commission shall:

80 (a) Dismiss the petition if the decision is supported by  
81 clear and convincing evidence, in which case the decision is  
82 subject to ss. 120.569 and 120.57;

83 (b) Place the utility's certificate on probationary status  
84 and require the utility to take the necessary steps to correct  
85 the water quality or wastewater service issues identified. The  
86 commission shall set benchmarks within a timeframe, not to  
87 exceed 3 years, and may require the utility to provide interim  
88 reports describing its progress in meeting such benchmarks. The  
89 commission may extend the timeframe for compliance beyond 3  
90 years if the circumstances that delay the utility, such as  
91 obtaining permits or natural disaster, are not within the  
92 utility's control; or

93 (c) Revoke the utility's certificate of authorization, in  
94 which case a receiver must be appointed pursuant to s. 367.165  
95 until a sale of the utility system has been approved pursuant to



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96 s. 367.071.

97 (8) The commission shall adopt by rule the format of and  
98 requirements for a petition and may adopt other rules to  
99 administer this section.

100 Section 2. Section 367.0812, Florida Statutes, is created  
101 to read:

102 367.0812 Rate fixing; quality of water or wastewater  
103 service as criterion.—

104 (1) In fixing rates that are just, reasonable,  
105 compensatory, and not unfairly discriminatory, the commission  
106 shall consider the extent to which the utility provides water  
107 service that meets secondary water quality standards for taste,  
108 odor, color, or corrosiveness, as established by the Department  
109 of Environmental Protection. In determining whether a utility  
110 has satisfied its obligation to provide water service to its  
111 customers which meets the standards for taste, odor, color, or  
112 corrosiveness, the commission shall consider:

113 (a) Testimony and evidence provided by customers and the  
114 utility;

115 (b) The results of past tests required by the Department of  
116 Environmental Protection which measure the utility's compliance  
117 with the applicable secondary water quality standards or with a  
118 county health department;

119 (c) Complaints regarding the applicable secondary water  
120 quality standards filed by customers with the commission or the  
121 Department of Environmental Protection, or the respective local  
122 governmental entity, or a county health department during the  
123 past 5 years; and

124 (d) If the commission deems necessary, the results of any



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125 updated test.

126 (2) In fixing just, reasonable, compensatory, and not  
127 unfairly discriminatory rates, the commission shall consider the  
128 extent to which the utility provides wastewater service to its  
129 customers without generating odor, noise, aerosol drift, or  
130 lighting in excess of the standards established by the  
131 Department of Environmental Protection. In determining the  
132 extent to which the utility provides wastewater service to its  
133 customers without generating odor, noise, aerosol drift, or  
134 lighting in excess of the standards by the Department of  
135 Environmental Protection, the commission shall consider:

136 (a) Testimony and evidence provided by customers and the  
137 utility;

138 (b) The results of past tests required by the Department of  
139 Environmental Protection which measure the utility's compliance  
140 with the applicable standards established by the Department of  
141 Environmental Protection; and

142 (c) Complaints regarding the alleged odor, noise, aerosol  
143 drift, or lighting filed with the Department of Environmental  
144 Protection or the commission, or the respective local  
145 governmental entity, or a county health department during the  
146 past 5 years.

147 (3) (a) In determining the quality of water or wastewater  
148 service, the commission shall consider a finding by the  
149 department as to whether a utility:

150 1. Has failed to provide water service that meets the  
151 secondary water quality standards of the department regarding  
152 taste, odor, color, or corrosiveness; or

153 2. Has generated odor, noise, aerosol drift, or lighting in



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154 providing wastewater service in excess of the standards  
155 established by the Department of Environmental Protection,  
156  
157 the utility shall create an estimate of the costs and benefits  
158 of a plausible solution to each quality of water or wastewater  
159 service issue identified by the commission.

160 (b) The utility shall meet with its customers within a time  
161 prescribed by the commission to discuss the estimated costs and  
162 benefits of and time necessary for implementing a plausible  
163 solution for each quality of service issue identified, and the  
164 utility shall report the results of such meeting to the  
165 commission.

166 (c) The utility shall inform the commission if:

167 1. The customers and the utility agree on a solution for  
168 each quality of service issue identified, what the solution is,  
169 and the cost of the solution; or

170 2. The customers and the utility prefer a different  
171 solution to at least one of the quality of service issues  
172 identified and the solution and cost of the solution preferred  
173 by each.

174 (d) The commission may require the utility to implement a  
175 solution that is in the best interest of the customers for each  
176 quality of service issue. The utility shall be allowed to  
177 recover the costs of the solutions ordered by the commission.  
178 The commission may establish the necessary benchmarks that a  
179 utility must meet for each solution and require the utility to  
180 report periodically until each solution is completed.

181 (4) Notwithstanding s. 367.072, customers may not petition  
182 the commission to revoke the certificate of authorization of a



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183 utility during the proceedings under this section.

184 (5) The commission may prescribe penalties for a utility's  
185 failure to adequately resolve each quality of water or  
186 wastewater service issue as required. Penalties may include  
187 finances as provided in s. 367.161; a reduction of return on equity  
188 of up to 100 basis points; the denial of all or part of a rate  
189 increase for a utility's system or part of a system if the  
190 commission determines that the water quality is less than  
191 satisfactory, until the water quality is found to be  
192 satisfactory; or cancellation of the certificate of  
193 authorization under s. 367.072.

194 (6) The commission shall adopt rules to assess and enforce  
195 compliance with this section. The Department of Environmental  
196 Protection shall establish secondary wastewater service  
197 standards regarding the generation of odor, noise, aerosol  
198 drift, and lighting.

199 Section 3. This act shall take effect October 1, 2014.

200  
201 ===== T I T L E A M E N D M E N T =====

202 And the title is amended as follows:

203 Delete everything before the enacting clause  
204 and insert:

205 A bill to be entitled  
206 An act relating to water and wastewater utilities;  
207 creating s. 367.072, F.S.; providing legislative  
208 findings; authorizing the Florida Public Service  
209 Commission to revoke a certificate of authorization  
210 upon receipt of a petition; requiring customers to  
211 file a notice of intent with the commission before





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212 submitting a petition; providing criteria for such  
213 petition; requiring the commission to take certain  
214 steps in response to the petition; prohibiting the  
215 customers from filing a petition within a specified  
216 timeframe under certain circumstances; prohibiting a  
217 utility from filing for a rate case under certain  
218 circumstances; requiring the utility to submit a  
219 response; requiring the commission to adopt rules;  
220 creating s. 367.0812, F.S.; requiring the commission  
221 to consider the quality of water or wastewater service  
222 when fixing rates; providing criteria that the  
223 commission must consider in making its determination;  
224 requiring the utility to meet with its customers to  
225 discuss the costs and benefits of plausible solutions  
226 if the commission finds that the utility has failed to  
227 meet certain water or wastewater quality standards;  
228 requiring that the utility be allowed to recover the  
229 costs of the solutions ordered by the commission;  
230 prohibiting customers from petitioning the commission  
231 to revoke the certificate of authorization of a  
232 utility under certain circumstances; authorizing the  
233 commission to impose penalties on a utility for  
234 certain failures; requiring the commission to adopt  
235 rules; requiring the Department of Environmental  
236 Protection to establish secondary wastewater service  
237 standards regarding the generation of odor, noise,  
238 aerosol drift, and lighting; providing an effective  
239 date.