

By the Committees on Community Affairs; and Communications, Energy, and Public Utilities; and Senator Simpson

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1 A bill to be entitled
2 An act relating to water and wastewater utilities;
3 creating s. 367.072, F.S.; providing legislative
4 findings; authorizing the Florida Public Service
5 Commission to revoke a certificate of authorization
6 upon receipt of a petition; requiring customers to
7 file a notice of intent with the commission before
8 submitting a petition; providing criteria for such
9 petition; requiring the commission to take certain
10 steps in response to the petition; prohibiting the
11 customers from filing a petition within a specified
12 timeframe under certain circumstances; prohibiting a
13 utility from filing for a rate case under certain
14 circumstances; requiring the utility to submit a
15 response; requiring the commission to adopt rules;
16 creating s. 367.0812, F.S.; requiring the commission
17 to consider the quality of water or wastewater service
18 when fixing rates; providing criteria that the
19 commission must consider in making its determination;
20 requiring the utility to meet with its customers to
21 discuss the costs and benefits of plausible solutions
22 if the commission finds that the utility has failed to
23 meet certain water or wastewater quality standards;
24 requiring that the utility be allowed to recover the
25 costs of the solutions ordered by the commission;
26 prohibiting customers from petitioning the commission
27 to revoke the certificate of authorization of a
28 utility under certain circumstances; authorizing the
29 commission to impose penalties on a utility for

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30 certain failures; requiring the commission to adopt
31 rules; requiring the Department of Environmental
32 Protection to establish secondary wastewater service
33 standards regarding the generation of odor, noise,
34 aerosol drift, and lighting; providing an effective
35 date.

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37 Be It Enacted by the Legislature of the State of Florida:

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

41 367.072 Petition to revoke certificate of authorization.—
42 The Legislature finds that it is in the public interest that
43 water and wastewater service be of good quality and consistent
44 with the standards set forth in this chapter. Therefore, a
45 utility's certificate of authorization may be revoked if, after
46 its customers file a petition in accordance with this section,
47 the commission finds that revocation is in the best interest of
48 the customers.

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

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

54 (b) Send the customers instructions detailing the required
55 format and content of the petition and the subsequent process
56 the commission must follow.

57 (2) Within 90 days after receipt of such instructions, the
58 customers must file a petition that, for the purpose of

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59 determining whether a utility is providing satisfactory water
60 quality or wastewater service, must:

61 (a) State with specificity each issue that the customers
62 have with the water quality or wastewater service, each time the
63 problem was reported to the utility, and how long each issue has
64 existed; and

65 (b) Be signed by at least 65 percent of a utility's
66 customers within a system. The term "customer" means an
67 individual who owns or rents property that is serviced by a
68 single meter or an individual whose name appears on the bill for
69 a master meter. Only one signature for each service address may
70 be included on the petition. An individual whose name appears on
71 the bill for a master meter may sign a petition if at least 65
72 percent of the heads of the households served by the master
73 meter, such as tenants or unit owners, support the petition, in
74 which case documentation of such support must be included with
75 the petition.

76 (3) The commission shall review the petition and, within 10
77 days after receipt, notify the customers whether the petition is
78 sufficient or whether additional information is required. If
79 additional information is required, the customers must file a
80 cured petition within 30 days after receipt of the notification.
81 If the customers fail to file the petition in accordance with
82 this subsection, the commission shall dismiss the petition, and
83 the customers may not file another petition for 1 year after the
84 date of dismissal.

85 (4) If the petition is in compliance with this section and
86 the issues identified within the petition support a reasonable
87 likelihood that the water or wastewater utility is failing to

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88 provide quality water or wastewater service, a docket shall be
89 opened. Once opened, the utility may not file for a rate case
90 until the docket is closed.

91 (5) A copy of the petition and written notification
92 regarding the prohibition against filing a rate case while the
93 docket remains open must be provided to the utility. The utility
94 shall submit a response to the commission addressing the issues
95 identified within the petition and explaining whether it is
96 providing quality water or wastewater service using the
97 following criteria:

98 (a) Federal and state primary water and wastewater
99 standards or secondary water quality or wastewater service
100 standards provided in s. 367.0812; and

101 (b) The relationship between the utility and its customers,
102 including each complaint received regarding service quality, the
103 length of time each customer has been complaining about service,
104 the resolution of each complaint, and the time it has taken to
105 address such complaints.

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

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

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

115 (b) Place the utility's certificate on probationary status
116 and require the utility to take the necessary steps to correct

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117 the water quality or wastewater service issues identified. The
118 commission shall set benchmarks within a timeframe, not to
119 exceed 3 years, and may require the utility to provide interim
120 reports describing its progress in meeting such benchmarks. The
121 commission may extend the timeframe for compliance beyond 3
122 years if the circumstances that delay the utility, such as
123 obtaining permits or natural disaster, are not within the
124 utility's control; or

125 (c) Revoke the utility's certificate of authorization, in
126 which case a receiver must be appointed pursuant to s. 367.165
127 until a sale of the utility system has been approved pursuant to
128 s. 367.071.

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

132 Section 2. Section 367.0812, Florida Statutes, is created
133 to read:

134 367.0812 Rate fixing; quality of water or wastewater
135 service as criterion.-

136 (1) In fixing rates that are just, reasonable,
137 compensatory, and not unfairly discriminatory, the commission
138 shall consider the extent to which the utility provides water
139 service that meets secondary water quality standards for taste,
140 odor, color, or corrosiveness, as established by the Department
141 of Environmental Protection. In determining whether a utility
142 has satisfied its obligation to provide water service to its
143 customers which meets the standards for taste, odor, color, or
144 corrosiveness, the commission shall consider:

145 (a) Testimony and evidence provided by customers and the

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146 utility;

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

151 (c) Complaints regarding the applicable secondary water
152 quality standards filed by customers with the commission or the
153 Department of Environmental Protection, or the respective local
154 governmental entity, or a county health department during the
155 past 5 years; and

156 (d) If the commission deems necessary, the results of any
157 updated test.

158 (2) In fixing just, reasonable, compensatory, and not
159 unfairly discriminatory rates, the commission shall consider the
160 extent to which the utility provides wastewater service to its
161 customers without generating odor, noise, aerosol drift, or
162 lighting in excess of the standards established by the
163 Department of Environmental Protection. In determining the
164 extent to which the utility provides wastewater service to its
165 customers without generating odor, noise, aerosol drift, or
166 lighting in excess of the standards by the Department of
167 Environmental Protection, the commission shall consider:

168 (a) Testimony and evidence provided by customers and the
169 utility;

170 (b) The results of past tests required by the Department of
171 Environmental Protection which measure the utility's compliance
172 with the applicable standards established by the Department of
173 Environmental Protection; and

174 (c) Complaints regarding the alleged odor, noise, aerosol

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175 drift, or lighting filed with the Department of Environmental
176 Protection or the commission, or the respective local
177 governmental entity, or a county health department during the
178 past 5 years.

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

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

185 2. Has generated odor, noise, aerosol drift, or lighting in
186 providing wastewater service in excess of the standards
187 established by the Department of Environmental Protection,

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189 the utility shall create an estimate of the costs and benefits
190 of a plausible solution to each quality of water or wastewater
191 service issue identified by the commission.

192 (b) The utility shall meet with its customers within a time
193 prescribed by the commission to discuss the estimated costs and
194 benefits of and time necessary for implementing a plausible
195 solution for each quality of service issue identified, and the
196 utility shall report the results of such meeting to the
197 commission.

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

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

202 2. The customers and the utility prefer a different
203 solution to at least one of the quality of service issues

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204 identified and the solution and cost of the solution preferred
205 by each.

206 (d) The commission may require the utility to implement a
207 solution that is in the best interest of the customers for each
208 quality of service issue. The utility shall be allowed to
209 recover the costs of the solutions ordered by the commission.
210 The commission may establish the necessary benchmarks that a
211 utility must meet for each solution and require the utility to
212 report periodically until each solution is completed.

213 (4) Notwithstanding s. 367.072, customers may not petition
214 the commission to revoke the certificate of authorization of a
215 utility during the proceedings under this section.

216 (5) The commission may prescribe penalties for a utility's
217 failure to adequately resolve each quality of water or
218 wastewater service issue as required. Penalties may include
219 finances as provided in s. 367.161; a reduction of return on equity
220 of up to 100 basis points; the denial of all or part of a rate
221 increase for a utility's system or part of a system if the
222 commission determines that the water quality is less than
223 satisfactory, until the water quality is found to be
224 satisfactory; or cancellation of the certificate of
225 authorization under s. 367.072.

226 (6) The commission shall adopt rules to assess and enforce
227 compliance with this section. The Department of Environmental
228 Protection shall establish secondary wastewater service
229 standards regarding the generation of odor, noise, aerosol
230 drift, and lighting.

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