

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/HB 357	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Finance & Tax Subcommittee; Santiago	99 Y's	15 N's
COMPANION BILLS:	CS/CS/CS/SB 272; CS/CS/SB 1050; HB 1321	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/HB 357 passed the House on April 30, 2014, as CS/CS/CS/SB 272. The bill includes portions of CS/CS/SB 1050 and HB 1321.

The bill establishes a process by which the customers of a private water utility may petition the Public Service Commission (PSC) to investigate issues concerning the quality of the water service provided by the utility. The petition must be signed by at least 65 percent of the utility's customers. Based on its evaluation of the issues raised, the utility's response, and other relevant factors, the PSC may:

- Dismiss the petition, if doing so is supported by clear and convincing evidence;
- Require the utility to take corrective actions to resolve the issues identified; or
- Revoke the utility's certificate of authorization and appoint a receiver until a sale of the utility is approved by the PSC.

Further, the bill requires the PSC, when setting rates for a water utility, to consider the extent to which the utility provides service that meets secondary drinking water standards established by the Department of Environmental Protection. The bill specifies the evidence that the PSC must consider in its review. If the PSC determines that the utility's water service does not meet these standards, the utility must create an estimate of the costs and benefits of a plausible solution to address each issue identified by the PSC, meet with its customers to discuss these estimates and the time necessary to implement the solution, and report the results of these meetings to the PSC. The PSC may require the utility to implement a solution for each issue that is in the best interests of the customers. The bill authorizes the utility to recover its costs to implement any solutions ordered by the PSC. Further, the bill authorizes the PSC to impose penalties for a utility's failure to adequately resolve each issue as required.

To implement these provisions, the bill requires the PSC to adopt rules, and it appropriates \$212,521 in recurring funds and \$12,012 in nonrecurring funds from the General Revenue Fund to the PSC and authorizes three full-time equivalent positions for the 2014-2015 fiscal year.

The bill was approved by the Governor on June 13, 2014, ch. 2014-68, L.O.F., and will become effective on July 1, 2014.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

In various areas throughout Florida, water service is provided through privately-owned and operated water utilities. These privately-owned utilities, sometimes referred to as investor-owned utilities, range in size from very small systems, owned by individuals as sole proprietorships and serving only a few dozen customers in a small neighborhood, to systems owned by large interstate corporations which serve tens of thousands of customers in multiple Florida counties.

For privately-owned water utilities operating within a single Florida county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.¹ Regardless of whether the county has opted to regulate those utilities, the PSC has jurisdiction over all water utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.² The PSC currently has jurisdiction over 143 water utilities in 37 counties, accounting for approximately 120,567 water customers.³ The remaining water customers in the state are served either by privately-owned utilities in non-jurisdictional counties, by statutorily exempt utilities (such as cooperatives and non-profits), by wells and septic tanks, or by systems owned, operated, managed, or controlled by governmental authorities.⁴

For each water utility within its jurisdiction, the PSC has exclusive authority over the utility's rates and service.⁵ The PSC must establish rates that are just, reasonable, compensatory, and not unfairly discriminatory.⁶ In doing so, the PSC must consider the value and quality of the service and the cost of providing the service, which includes, but is not limited to: debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service.⁷

The Department of Environmental Protection (DEP) is the state agency with primary authority to implement and enforce federal and state drinking water standards. The focus of DEP's permitting, monitoring, and enforcement of water systems is to ensure compliance with primary drinking water standards to protect the health and safety of the public and the environment.⁸ DEP has also adopted secondary standards for contaminants related to color, corrosion, taste, and odor.⁹ Testing for these secondary standards is required on a regular basis, though DEP generally requires corrective action only if users (i.e., water customers) voice significant complaints or if a primary contaminant level has also been exceeded.

As noted above, the PSC must consider a utility's quality of service in rate cases. In doing so, the PSC evaluates the quality of the product, the operating condition of the utility's plant and facilities, and the utility's efforts to address customer satisfaction.¹⁰ Sanitary surveys, outstanding citations, violations and consent orders on file with DEP and county health departments are also considered. In addition, DEP and county health department officials' testimony and customer testimony concerning quality of

¹ Section 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this election only after 10 continuous years of PSC regulation.

² *Id.*

³ *Facts and Figures of the Florida Utility Industry*, Florida Public Service Commission, April 2013.

⁴ Section 367.022(2), F.S.

⁵ Section 367.011, F.S.

⁶ Section 367.081, F.S.

⁷ *Id.*

⁸ See Chapter 403, F.S., and Chapters 62-550, 555, 602, and 699, F.A.C., for drinking water regulations.

⁹ Rule 62-550.320, F.A.C.

¹⁰ Rule 25-30.433(1), F.A.C.

service is considered.¹¹ In most cases, the emphasis of this evaluation is compliance with primary drinking water standards related to health and safety of the public and the environment.¹² If the PSC finds that a utility has failed to provide its customers with water service that meets the standards set by DEP or the water management districts, the PSC may reduce the utility's authorized return on equity until the standards are met.¹³ According to the PSC, current law does not give the PSC specific authority to consider secondary drinking water standards.¹⁴

In 2012, the Legislature created the Study Committee on Investor-Owned Water & Wastewater Utility Systems (study committee) and directed it to review a list of issues, including water quality.¹⁵ Among other things, the study committee recommended amending s. 367.081, F.S., to establish a mechanism within a rate case proceeding to require the PSC to consider the extent to which a utility meets secondary drinking water standards.¹⁶

Effect of the Bill

The bill establishes a process by which the customers of a regulated water utility may petition the PSC to investigate issues concerning the quality of the water service provided by the utility. In addition, the bill requires the PSC, when setting rates for a water utility, to consider the extent to which the utility provides service that meets secondary drinking water standards established by the Department of Environmental Protection.

Customer Petition Process

The bill creates s. 367.072, F.S., which allows a water utility's customers¹⁷ to petition the PSC to determine whether revocation of the utility's certificate of authorization is in the best interest of the customers based on issues related to quality of water service.

Prior to filing a petition under this section, customers of a utility may submit a letter to the PSC stating their intent to file a petition. If the PSC receives such a letter, its staff must notify the utility within 10 days and provide instructions to the customers concerning the petition process and the information required in the petition. The customers' petition must be filed within 90 days after receipt of these instructions. Alternatively, customers may file a petition directly with the PSC without submitting a notice of intent.

The bill provides that a customer petition under this section must state with specificity each issue that the utility's customers have with the utility's quality of water service, including each time the issue was reported to the utility and how long each issue has existed. Further, the petition must be signed by at least 65 percent of the utility's customers in the service area covered under its certificate of authorization. A customer whose name appears on the bill for a master meter may sign the petition if 65 percent of the customers, tenants, or unit owners served by the master meter support the petition. Documentation of such support must be provided with the petition.

Within 10 days of receipt of the petition, the PSC staff must notify the customers if the petition is sufficient or if additional information is necessary. The bill allows the customers 30 days to cure an

¹¹ *Id.*

¹² *Report of the Study Committee on Investor-Owned Water and Wastewater Utility Systems (Study Committee Report)*, dated February 15, 2013, at p.106, available at <http://www.psc.state.fl.us/utilities/waterwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last accessed on May 6, 2014).

¹³ Section 367.111(2), F.S.

¹⁴ FPSC, *Senate Bill 272 Agency Analysis* (Nov. 13, 2013).

¹⁵ Chapter 2012-187, s. 2, L.O.F.

¹⁶ For the recommended language, see the *Study Committee Report*, Attachment IV.9-D, at p.115.

¹⁷ For these purposes, "customer" is defined in the bill as "an individual whose property is serviced by a single meter or a person whose name appears on the bill for a master meter." This definition appears to exclude a tenant who is identified as the utility's customer-of-record at a particular property.

insufficient petition. If the customers fail to timely cure the insufficiency, the PSC must dismiss the petition with prejudice, precluding the filing of another petition under this section for one year.

If the PSC finds that the petition is sufficient and that the issues identified “support a reasonable likelihood that the utility is failing to provide quality of water service,” the utility is prohibited thereafter from filing a rate case until the PSC has issued a final order addressing the issues identified in the petition. Further, the bill provides that the utility, in preparing a response to the petition, must address federal and state primary drinking water standards or secondary drinking water standards pursuant to s. 367.0812, F.S.¹⁸ and describe its relationship with its customers, including each complaint received, the length of time each customer has been complaining, the resolution of each complaint, and the time taken to address each complaint.

The PSC must evaluate the petition by considering the issues identified, the utility’s response, and any other factors it deems relevant. Based on its evaluation of the issues raised, the utility’s response, and other relevant factors, the PSC may:

- Dismiss the petition, if doing so is supported by clear and convincing evidence;
- Require the utility to take corrective actions to resolve the issues identified and establish benchmarks within a timeframe not greater than 3 years, unless circumstances beyond the utility’s control delay the corrective action beyond 3 years; or
- Revoke the utility’s certificate of authorization and appoint a receiver until a sale of the utility is approved by the PSC.¹⁹

The bill requires the PSC to adopt rules to administer this customer petition process and to establish the requirements for such a petition.

Review of Secondary Drinking Water Standards in a Rate Case

The bill creates s. 367.0812, F.S., which requires the PSC, when setting rates for a water utility, to consider the extent to which the utility provides service that meets secondary drinking water standards established by DEP. In determining whether the utility provides water that meets these standards, the PSC must consider:

- Testimony and evidence provided by customers and the utility;
- Relevant complaints filed during the previous 5 years with the PSC, DEP, a county health department, or the local government;
- Results of past tests required by DEP or a county health departments to measure compliance with secondary drinking water standards; and
- Results of any updated test deemed necessary by the PSC.

The bill specifically provides that the PSC must consider a finding by DEP as to whether the utility has failed to provide water service that meets DEP’s secondary drinking water standards. If the PSC, as a result of this analysis, determines that the utility’s water service does not meet secondary drinking water standards, the utility must take the following steps:

- Create an estimate of the costs and benefits of a plausible solution to each issue identified;
- Meet with its customers as prescribed by the PSC to discuss the estimated costs and benefits of, and the time necessary to implement, a plausible solution for each issue;
- Report the results of these customer meetings to the PSC, including whether the customers and the utility agree on a solution for each issue or prefer a different solution to any issue; and

¹⁸ Section 367.0812, F.S., is created by the bill and discussed in further detail herein.

¹⁹ The bill does not specify the circumstances under which the PSC may choose to require corrective action or to revoke the utility’s certificate.

- Identify the cost of each agreed solution and, if the customers and the utility prefer different solutions, the cost of each party's preferred solution.

For each issue identified, the PSC may require the utility to implement a solution that the PSC determines to be in the best interest of the customers. The PSC may establish benchmarks and require interim reporting on the progress of implementation. The bill authorizes the utility to recover its costs to implement solutions ordered by the PSC.

During a proceeding under these provisions, the bill prohibits customers from filing a petition pursuant to s. 367.072, F.S. (i.e., the customer petition process created by the bill and described above in detail).

The bill authorizes the PSC to prescribe penalties for a utility's failure to adequately resolve each quality of water service issue as required. These penalties may include: fines as provided in s. 367.161, F.S.; a reduction of return on equity of up to 100 basis points; denial of all or part of a rate increase until the quality of service is found to be satisfactory; or revocation of the utility's certificate of authorization. The bill requires the PSC to adopt rules to assess and enforce a utility's compliance with this section.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriates \$212,521 in recurring funds and \$12,012 in nonrecurring funds from the General Revenue Fund to the PSC and authorizes three full-time equivalent positions for Fiscal Year 2014-2015 to implement the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Customer Petition Process

If a PSC-regulated water utility becomes the subject of a customer petition under the process established by the bill, the utility will incur costs to respond to the petition. The utility may incur additional costs to resolve any water quality issues identified by the PSC. To the extent that the utility incurs costs to resolve water quality issues upon direction from the PSC, these costs will likely be recovered from customers through the utility's rates.

Review of Secondary Drinking Water Standards in a Rate Case

PSC-regulated water utilities, as part of a rate case, may incur additional costs to comply with the water quality review process established by the bill. Such costs will likely be recovered from the utility's customers as rate case expenses, which by law are recovered over a four year period then removed from the utility's rates.²⁰ If the PSC determines that the utility's water service does not meet secondary drinking water standards, the utility will incur additional costs to comply with the process identified in the bill. To the extent that the utility incurs costs to resolve water quality issues upon direction from the PSC, the bill authorizes the utility to recover those costs through rates. The process established by the bill should allow customers to be fully informed of these potential costs.

D. FISCAL COMMENTS:

None.

²⁰ Section 367.0816, F.S.