

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1051 Environmental Compliance Costs

**SPONSOR(S):** Tourism, Infrastructure & Energy Subcommittee, Fernandez-Barquin

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 964

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	15 Y, 0 N, As CS	Johnson	Keating
2) Environment, Agriculture & Flooding Subcommittee	17 Y, 0 N	Gawin	Moore
3) Commerce Committee			

### SUMMARY ANALYSIS

Under current law, investor-owned electric utilities may recover certain costs, such as fuel-related expenses and environmental compliance costs, outside of base rates through separate cost recovery charges approved by the Public Service Commission (PSC). Environmental compliance costs are recovered through a statutorily created mechanism known as the Environmental Cost Recovery Clause (ECRC), which provides cash flow for the specific operations and maintenance activities and large equipment modifications necessary to comply with environmental laws and regulations.

The bill expands the definition of “environmental compliance costs” for purposes of the ECRC to include costs or expenses prudently incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a governmental wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system where operation of the system will serve to further compliance with environmental laws or regulations applicable to the electric utility and where the system fully or partially satisfies a local government’s statutory reclaimed water reuse requirements. The bill also requires at least 50 percent of the reclaimed water the reuse system produces to be used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility to offset all or part of the electric utility’s water use authorized by permit.

The bill does not appear to have a fiscal impact on state or local governments, but may result in changes to electric rates paid by private and public entities. See Fiscal Analysis for details.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Ratemaking for Investor-Owned Electric Utilities

The Public Service Commission (PSC) has broad jurisdiction over the rates and service of investor-owned electric utilities (IOUs) in Florida.<sup>1</sup> Under this broad grant of authority, and through more specific grants of authority in ch. 366, F.S., the PSC sets rates for each IOU through five primary components, each of which is established in a separate administrative proceeding:

- Base rates
  - Designed to recover most operations and maintenance expenses, capital investments, and a return on capital investment.
- Fuel and purchased power cost recovery charges
  - Designed to recover the costs of fuel and the energy component of wholesale power purchases.
  - By PSC order, may include recovery of capital investments, including a return on investment, in limited circumstances.
- Capacity cost recovery charges
  - Designed to recover costs of the capacity component of wholesale power purchases.
  - By statute, may include recovery of certain costs related to development of new nuclear power plants, including a return, provided that the costs will be moved into base rates when the new plant becomes operational.<sup>2</sup>
- Environmental cost recovery charges
  - Designed to recover costs to comply with government-mandated environmental standards.
  - By statute, may include recovery of certain capital investments, including a return on investment, provided that these costs may be moved into base rates at the IOU's next rate case.<sup>3</sup>
- Energy conservation and efficiency cost recovery charges
  - Designed to recover costs of implementing PSC-approved energy conservation and efficiency programs.

In each base rate proceeding, the PSC sets a reasonable rate of return on equity for the IOU. After rates are set, the actual rate of return on equity earned by an IOU fluctuates over time as utility revenues and expenses fluctuate.

##### Environmental Cost Recovery Charges

Separate from base rates, environmental cost recovery charges are set annually, and revenue collected through the Environmental Cost Recovery Clause (ECRC) provides cash flow for the specific operations and maintenance activities and large equipment modifications necessary to comply with environmental laws and regulations.<sup>4</sup>

The ECRC was established by the Legislature in 1993. To implement this law, the PSC established three criteria for approval of recovery through the ECRC:

- The electric utility's costs were prudently incurred after April 13, 1993.

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<sup>1</sup> See, e.g., ss. 366.01, 366.04(1), 366.041, 366.05(1), and 366.06, F.S. There are five public electric utilities in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company. Florida Power & Light Company and Gulf Power Company operate under the same parent company, NextEra Energy, Inc.

<sup>2</sup> S. 366.93, F.S.

<sup>3</sup> S. 366.8255, F.S.

<sup>4</sup> Public Service Commission, Agency Analysis of 2021 House Bill 1051 p. 1 (March 3, 2021).

- The activity is legally required to comply with a governmentally imposed environmental regulation that was enacted, that became effective, or whose effect was triggered after the electric utility's last test year upon which rates are based.
- The electric utility's costs are not recovered through some other cost recovery mechanism or through base rates.<sup>5</sup>

Environmental compliance costs are defined in statute as all costs or expenses incurred by an electric utility in complying with environmental laws or regulations.<sup>6</sup> Environmental compliance costs include, but are not limited to:

- Inservice capital investments, including the electric utility's last authorized rate of return on equity;
- Operation and maintenance expenses;
- Fuel procurement costs;
- Purchased power costs;
- Emission allowance costs;
- Direct taxes on environmental equipment;
- Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into between the electric utility and the Department of Environmental Protection (DEP) or the United States Environmental Protection Agency (EPA) for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility; and
- Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in the state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and universities.<sup>7</sup>

### Reuse of Reclaimed Water

Water conservation and the promotion of reuse of reclaimed water have been established by the Legislature as formal state objectives.<sup>8</sup> Reuse is defined as the deliberate application of reclaimed water for a beneficial purpose.<sup>9</sup> Reclaimed water is defined as water from a domestic wastewater<sup>10</sup> treatment facility that has received at least secondary treatment<sup>11</sup> and basic disinfection<sup>12</sup> for reuse.<sup>13</sup>

Reclaimed water is reused for various purposes, such as irrigation, industrial uses, groundwater recharge, and prevention of saltwater intrusion in coastal groundwater aquifers.<sup>14</sup> Industrial uses of reclaimed water include plant wash-down, and processing and cooling water purposes.<sup>15</sup> Several power plants throughout the state use reclaimed water for cooling purposes.<sup>16</sup>

<sup>5</sup> See PSC Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, Florida Statutes by Gulf Power Company. Section 120.80(13), F.S., exempts cost recovery clause proceedings from rulemaking requirements.

<sup>6</sup> S. 366.8255(1)(d), F.S. Environmental laws or regulations are defined as "all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment."

<sup>7</sup> S. 366.8255(1)(d), F.S.

<sup>8</sup> Ss. 403.064(1) and 373.250(1), F.S.

<sup>9</sup> R. 62-610.200(52), F.A.C.

<sup>10</sup> Section 367.021(5), F.S., defines the term "domestic wastewater" to mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

<sup>11</sup> Rule 62-610.200(54), F.A.C. defines the term "secondary treatment" to mean "wastewater treatment to a level that will achieve the effluent limitations specified in paragraph 62-600.420(1)(a), F.A.C."

<sup>12</sup> Rule 62-600.440(5), F.A.C., provides the requirements for basic disinfection.

<sup>13</sup> Section 373.019(17), F.S.; R. 62-610.200(48), F.A.C.

<sup>14</sup> Martinez, Christopher J. and Clark, Mark W., *Reclaimed Water and Florida's Water Reuse Program*, UF/IFAS Agricultural and Biological Engineering Department (rev. 07/2012), available at <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.590.5063&rep=rep1&type=pdf>.

<sup>15</sup> Department of Environmental Protection (DEP), *Uses of Reclaimed Water*, <https://floridadep.gov/water/domestic-wastewater/content/uses-reclaimed-water> (last visited Mar. 5, 2021).

<sup>16</sup> DEP, *Industrial Uses of Reclaimed Water*, <https://floridadep.gov/water/domestic-wastewater/content/industrial-uses-reclaimed-water> (last visited Mar. 5, 2021).

Local governments are authorized and encouraged under Florida law to implement programs for the reuse of reclaimed water and are authorized to allocate the costs of such programs in a reasonable manner.<sup>17</sup>

### Ocean Outfalls

An ocean outfall occurs when a wastewater treatment facility or other facility discharges treated effluent into coastal or ocean waters.<sup>18</sup> State law prohibits construction of new ocean outfalls and requires that all six ocean outfalls in Florida cease discharging wastewater by December 31, 2025.<sup>19</sup> In addition, wastewater facilities that discharged wastewater through an ocean outfall on July 1, 2008, are required to install a reuse system no later than December 31, 2025.<sup>20</sup> Existing discharges through ocean outfalls were required to meet advanced wastewater treatment requirements<sup>21</sup> by December 31, 2018.<sup>22</sup>

### **Effect of the Bill**

The bill amends s. 366.8255(1)(d), F.S., by expanding the definition of environmental compliance costs to include the costs or expenses prudently incurred by an electric utility, after July 1, 2021, pursuant to an agreement between the electric utility and a governmental wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system where operation of the system will serve to further compliance with environmental laws or regulations that apply to the electric utility and where operation of the system will serve to fully or partially satisfy a local government's reclaimed water reuse requirements under s. 403.064, F.S.,<sup>23</sup> or s. 403.086, F.S.<sup>24</sup> The bill further requires that at least 50 percent of the produced reclaimed water is used in conjunction with the water requirements of one or more of the utility's electrical generating facilities in order to offset all or part of the electric utility's water use authorized by permit.

Under the bill, an electric utility that constructs a new wastewater reuse system that satisfies the expanded definition of environmental compliance costs may begin to seek recovery of all its prudently incurred costs and expenses through the ECRC. The electric utility's level of cost recovery through the ECRC may include depreciation of the capital investments in the wastewater reuse system, the associated direct operating and maintenance expenses, and associated indirect expenses such as taxes and a return on its capital investments.

#### **B. SECTION DIRECTORY:**

**Section 1** Amends s. 366.8255, F.S., relating to environmental cost recovery.

**Section 2** Provides an effective date of July 1, 2021.

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

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

##### **1. Revenues:**

None.

##### **2. Expenditures:**

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<sup>17</sup> Section 403.064(9)-(10), F.S.

<sup>18</sup> DEP, *Ocean Outfall Study Final Report* ES-1 (Apr. 18, 2006), available at [https://floridadep.gov/sites/default/files/OceanOutfallStudy\\_0.pdf](https://floridadep.gov/sites/default/files/OceanOutfallStudy_0.pdf).

<sup>19</sup> S. 403.086(10), F.S.; Ch. 2008-232, L.O.F.

<sup>20</sup> S. 403.086(10)(c), F.S.

<sup>21</sup> S. 403.086(4), F.S.

<sup>22</sup> S. 403.086(10)(b), F.S.

<sup>23</sup> Section 403.064, F.S., relates to the use of reclaimed water.

<sup>24</sup> Section 403.086, F.S., relates to sewage disposal facilities.

None. Any increased workload associated with the PSC's review of the ECRC petition is expected to be handled within existing PSC resources.

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

1. Revenues:

None.

2. Expenditures:

The bill may result in higher electric rates for local governments if an electric utility's costs increase due to agreements with wastewater utilities for wastewater reuse systems.

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

The bill may result in higher electric rates if an electric utility's costs increase due to agreements with wastewater utilities for wastewater reuse systems.

**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 action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

Due to economies of scale, it is possible that a joint-use wastewater reuse system will result in lower total costs to the electric utility and wastewater utility when compared with two independent actions by these parties. While it is possible that the agreement between the parties could apportion cost and liability responsibilities, the bill does not require the agreement to address these matters. Therefore, the bill may be interpreted to create an incentive or an expectation that local governments shift cost and liability responsibilities from wastewater utilities to electric utilities.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 9, 2021, the Tourism, Infrastructure & Energy Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Specifies that an electric utility's water reuse project, to be eligible for cost recovery as an environmental compliance cost under the bill, must:
  - Be incurred pursuant to an agreement between the electric utility and a governmental wastewater utility; and
  - Serve to further compliance with environmental laws or regulations that apply to the electric utility.

- Provides that at least 50 percent of the reclaimed water produced by an eligible project must be used in conjunction with the water requirements of an electric generating facility.

This analysis is drafted to the committee substitute as approved by the Tourism, Infrastructure & Energy Subcommittee.