The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Environment and Natural Resources

BILL:	SB 964
INTRODUCER:	Senators Diaz and Taddeo
SUBJECT:	Environmental Compliance Costs
DATE:	February 12, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Rogers	EN	**Pre-meeting**
2.			RI	
3.			RC	

I. Summary:

SB 964 revises the definition of "environmental compliance costs" in the environmental cost recovery provision of the Florida Energy Efficiency and Conservation Act to include costs or expenses incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a wastewater utility for the construction and operation of a wastewater reuse system that fully or partially satisfies a local government's statutory reclaimed water reuse requirements. The bill also requires that at least 50 percent of the reclaimed water the reuse system produces is used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility. The revision adds the costs to those recoverable by utilities through a cost recovery factor that is separate from the utility's base rates.

The bill takes effect on July 1, 2021.

II. Present Situation:

Environmental Cost Recovery

The Florida Energy Efficiency and Conservation Act establishes a mechanism for a utility to recover specified environmental compliance costs through a charge separate from the utility's base rates.[1] This is referred to as the environmental cost recovery clause (ECRC).[2]

[1] Section 366.8255(2), F.S.
[2] *Citizens v. Brown*, 269 So. 3d 498 (Fla. 2019).

Environmental compliance costs are defined as all costs or expenses incurred by an electric utility in complying with environmental laws or regulations.[3] 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 this 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.[4]

Typically, the ECRC allows utilities to recover costs that are not easily controlled by the utility, such as fuel costs which fluctuate with the market or environmental costs based on new regulations.[5] Revenue collected through the ECRC provides cash flow for the specific operations and maintenance activities and large equipment modifications necessary to comply with environmental laws and regulations.[6]

An electric utility may submit to the Florida Public Service Commission (PSC) a petition describing the utility's proposed environmental compliance activities and projected environmental compliance costs.[7] If approved, the PSC will allow recovery of the utility's prudently incurred environmental compliance costs, and any amendments to the costs or change in the application or enforcement of the costs, through an environmental compliance cost recovery factor that is separate and apart from the utility's base rates.[8] An adjustment for the level of costs currently being recovered through base rates or other rate adjustment clauses must be included in the petition.[9]

The environmental compliance cost recovery factor must be set periodically (at least annually) based on projections of the utility's environmental compliance costs during the forthcoming

[3] Section 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." Section 366.8255(1)(c), F.S.
[4] Section 366.8255(1)(d), F.S.
[5] Public Service Commission (PSC), *Senate Bill 964 Analysis* (Feb. 11, 2021), *available at* http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=31380.
[6] *Id*.
[7] Section 366.8255(2), F.S.
[8] *Id*.
[9] *Id*.

recovery period. The environmental compliance cost recovery factor must periodically reconcile the actual environmental compliance costs with the projections on which past factors have been set.[10] Environmental compliance costs recovered through the environmental cost recovery factor must be allocated to the customer classes using statutory criteria.[11]

Reuse of Reclaimed Water

Water conservation and the promotion of reuse of reclaimed water have been established as formal state objectives by the Legislature.[12] Reuse is defined as the deliberate application of reclaimed water for a beneficial purpose.[13] Whereas, reclaimed water is defined as water from a domestic wastewater[14] treatment facility that has received at least secondary treatment[15] and basic disinfection[16] for reuse.[17]

Reclaimed water is reused for various purposes, such as irrigation, industrial uses, groundwater recharge, and prevention of saltwater intrusion in coastal groundwater aquifers.[18] Industrial uses of reclaimed water include plant wash down and processing and cooling water.[19] Several power plants throughout the state use reclaimed water for cooling purposes.[20]

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.[21]

Ocean Outfalls

An ocean outfall occurs when a wastewater treatment facility or other facility discharges treated effluent into coastal or ocean waters. There are six domestic wastewater facilities in Palm Beach, Broward, and Miami-Dade Counties that discharge or previously discharged approximately 300 mgd of treated domestic wastewater directly into the Atlantic Ocean through ocean outfalls.[22] However, state law prohibits construction of new ocean outfalls and requires that all six ocean

[10] Section 366.8255(3), F.S.
[11] Section 366.8255(4), F.S.
[12] Sections 403.064(1) and 373.250(1), F.S.
[13] Fla. Admin. Code R. 62-610.200(52).
[14] 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.
[15] Fla. Admin. Code R. 62-610.200(54) 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."
[16] Fla. Admin. Code R. 62-600.440(5) provides the requirements for basic disinfection.
[17] Section 373.019(17), F.S.; Fla. Admin. Code R. 62-610.200(48).
[18] 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.
[19] Department of Environmental Protection (DEP), *Uses of Reclaimed Water*, https://floridadep.gov/water/domestic-wastewater/content/uses-reclaimed-water (last visited Feb. 5, 2021).
[20] DEP, *Industrial Uses of Reclaimed Water*, https://floridadep.gov/water/domestic-wastewater/content/industrial-uses-reclaimed-water (last visited Feb. 5, 2021).
[21] Section 403.064(9)-(10), F.S.
[22] DEP, *Ocean Outfall Study Final Report* ES-1 (Apr. 18, 2006), *available at* https://floridadep.gov/sites/default/files/OceanOutfallStudy_0.pdf.

outfalls in Florida cease discharging wastewater by December 31, 2025.[23] 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.[24] Existing discharges through ocean outfalls were required to meet advanced waste treatment requirements[25] by December 31, 2018.[26]

III. Effect of Proposed Changes:

The bill revises the definition of "environmental compliance costs" in the environmental cost recovery provision of the Florida Energy Efficiency and Conservation Act to include all costs or expenses incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system that fully or partially satisfies a local government's statutory reclaimed water reuse requirements, including for ocean outfalls. The bill requires that at least 50 percent of the reclaimed water the reuse system produces is used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility.

The bill takes effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

[23] Section 403.086(10), F.S.; chapter 2008-232, Laws of Fla.
[24] Section 403.086(10)(c), F.S.
[25] Section 403.086(4), F.S.
[26] Section 403.086(10)(b), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill could potentially result in higher electric rates for consumers if an electric utility's costs increase due to agreements with wastewater utilities for wastewater reuse systems.[27]

C. Government Sector Impact:

The bill could potentially 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.[28]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 366.8255 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[27] PSC, *Senate Bill 964 Analysis* (Feb. 11, 2021), *available at* http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=31380.
[28] *Id*.