

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 964

INTRODUCER: Regulated Industries and Senators Diaz and Taddeo

SUBJECT: Environmental Compliance Costs

DATE: April 15, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>Rogers</u>	<u>EN</u>	<b>Favorable</b>
2.	<u>Sharon</u>	<u>Imhof</u>	<u>RI</u>	<b>Fav/CS</b>
3.	<u>Anderson</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 964 revises the definition of “environmental compliance costs” in the Florida Energy Efficiency and Conservation Act to include costs or expenses incurred by an electric utility after July 1, 2021, for the construction and operation of a wastewater reuse system. Operation of the wastewater reuse system must serve to further compliance with environmental laws or regulations that apply to the electric utility. The system must fully or partially satisfy a local government’s statutory reclaimed water reuse requirements, including those for ocean outfalls. The bill requires at least 50 percent of reclaimed water produced to be used in conjunction with the water requirements of facilities owned by the electric utility. This is required in order to offset all or part of the electric utility’s water use, as authorized by permit. This revision will allow utilities to petition the Florida Public Service Commission (PSC) for recovery of such costs through a cost-recovery factor, which 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 utilities to petition the PSC for recovery of specified environmental compliance costs through a charge

separate from the utility's base rates.<sup>1</sup> This is referred to as the environmental cost-recovery clause (ECRC).<sup>2</sup>

Environmental compliance costs are defined as all costs or expenses incurred by an electric utility in complying with environmental laws or regulations.<sup>3</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 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup>

An electric utility may submit a petition to the PSC describing the utility's proposed environmental compliance activities and projected environmental compliance costs.<sup>7</sup> If approved by the PSC, the utility will be allowed to recover 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

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<sup>1</sup> See s. 366.8255(2), F.S.

<sup>2</sup> See *Citizens v. Brown*, 269 So. 3d 498 (Fla. 2019).

<sup>3</sup> 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.

<sup>4</sup> Section 366.8255(1)(d), F.S.

<sup>5</sup> Public Service Commission, *Bill Analysis for SB 964* (Feb. 11, 2021) (on file with the Senate Committee on Regulated Industries).

<sup>6</sup> *Id.*

<sup>7</sup> Section 366.8255(2), F.S.

utility's base rates.<sup>8</sup> An adjustment for the level of costs currently being recovered through base rates or other rate adjustment clauses must be included in the petition.<sup>9</sup>

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 recovery period.<sup>10</sup> The environmental compliance cost-recovery factor must periodically reconcile the actual environmental compliance costs with the projections on which past factors have been set.<sup>11</sup> Environmental compliance costs recovered through the environmental cost-recovery factor must be allocated to the customer classes using statutory criteria.<sup>12</sup>

### **Reuse of Reclaimed Water**

Water conservation and the promotion of reuse of reclaimed water have been established as formal state objectives by the Legislature.<sup>13</sup> Reuse is defined as the deliberate application of reclaimed water for a beneficial purpose.<sup>14</sup> Whereas, reclaimed water is defined as water from a "domestic wastewater"<sup>15</sup> treatment facility that has received at least "secondary treatment"<sup>16</sup> and basic disinfection<sup>17</sup> for reuse.<sup>18</sup>

Wastewater reuse is governed by ss. 403.064 and 403.086, F.S. Permitting requirements and limitations are detailed in s. 403.064, F.S. Permits issued by the Department of Environmental Protection for domestic wastewater treatment facilities must be consistent with applicable requirements for consumptive use permits.<sup>19</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>20</sup> Industrial uses include plant wash down, processing water, and cooling water purposes.<sup>21</sup> Several power plants throughout the state use reclaimed water for cooling purposes.<sup>22</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Section 366.8255(3), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Section 366.8255(4), F.S.

<sup>13</sup> See ss. 403.064(1) and 373.250(1), F.S.

<sup>14</sup> Fla. Admin. Code R. 62-610.200(52)(2020).

<sup>15</sup> "Domestic wastewater" is defined as "wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants." Section 367.021(5), F.S.

<sup>16</sup> 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."

<sup>17</sup> Fla. Admin. Code R. 62-600.440(5) provides the requirements for basic disinfection.

<sup>18</sup> Section 373.019(17), F.S.; Fla. Admin. Code R. 62-610.200(48).

<sup>19</sup> Section 403.064(8). Part II of ch. 373, F.S., governs consumptive use permits.

<sup>20</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), (on file with the Senate Committee on Regulated Industries).

<sup>21</sup> Department of Environmental Protection, *Uses of Reclaimed Water*, <https://floridadep.gov/water/domestic-wastewater/content/uses-reclaimed-water> (last visited Feb. 24, 2021).

<sup>22</sup> See Department of Environmental Protection, *Industrial Uses of Reclaimed Water*, <https://floridadep.gov/water/domestic-wastewater/content/industrial-uses-reclaimed-water> (last visited Feb. 24, 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>23</sup>

### **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 million gallons per day of treated domestic wastewater directly into the Atlantic Ocean through ocean outfalls.<sup>24</sup> However, 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>25</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>26</sup> Existing discharges through ocean outfalls were required to meet “advanced waste treatment”<sup>27</sup> requirements by December 31, 2018.<sup>28</sup>

### **III. Effect of Proposed Changes:**

The bill revises the definition of “environmental compliance costs” within the Environmental Cost Recovery provision of the Florida Energy Efficiency and Conservation Act. The definition is expanded 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 governmental wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system. Operation of the wastewater reuse system must serve to further compliance with environmental laws or regulations that apply to the electric utility. To qualify, the system must fully or partially satisfy a local government’s statutory reclaimed water reuse requirements, including ocean outfall requirements. At least 50 percent of the reclaimed water produced by the system must be used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility. This is required in order to offset all or part of the electric utility’s water use, as authorized by permit. This revision will allow utilities to petition the PSC for recovery of such costs through an environmental cost-recovery factor, which is separate from the utility’s base rates.

The bill takes effect on July 1, 2021.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>23</sup> Section 403.064(9)-(10), F.S.

<sup>24</sup> University of Florida, Department of Environmental Engineering Services, *Ocean Outfall Study Final Report* at p. 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) (last visited Feb. 23, 2021).

<sup>25</sup> Section 403.086(10), F.S.; ch. 2008-232, Laws of Fla.

<sup>26</sup> Section 403.086(10)(c), F.S.

<sup>27</sup> Section 403.086(4), F.S.

<sup>28</sup> Section 403.086(10)(b), F.S.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill may result in higher electric rates for consumers if an electric utility's petition for an environmental cost-recovery clause is approved by the PSC.<sup>29</sup>

**C. Government Sector Impact:**

The bill may result in higher electric rates for local governments if an electric utility's petition for an environmental cost-recovery clause is approved by the PSC.<sup>30</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 366.8255 of the Florida Statutes.

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<sup>29</sup> PSC Bill Analysis, *supra* note 5.

<sup>30</sup> *Id.*

**IX. Additional Information:**

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

**CS by Regulated Industries on March 1, 2021:**

The committee substitute:

- Specifies that the wastewater utility, which the electric utility is contracting with for construction and operation of a wastewater reuse system, must be a governmental utility.
- Requires the operation of the wastewater reuse system to be in compliance with environmental laws or regulations applicable to the electric utility.
- Requires at least 50 percent of the reclaimed water produced by the reuse system to offset all or part of the electric utility's water use, as authorized by its permit.

- B. Amendments:

None.