The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNICATIONS, ENERGY, AND PUBLIC UTILITIES
Senator Benacquisto, Chair
Senator Smith, Vice Chair

MEETING DATE: Monday, April 11, 2011
TIME: 1:00 —4:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Benacquisto, Chair; Senator Smith, Vice Chair; Senators Altman, Bogdanoff, Braynon, Diaz de la Portilla, Evers, Fasano, Flores, Joyner, Lynn, Margolis, Negron, and Sachs

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 1460** Commerce and Tourism / Bennett (Similar H 1175)	Energy Economic Zones; Includes energy economic zones in the pilot program implementing an alternative state review process. Exempts certain machinery and equipment used in the production of renewable energy in an energy economic zone from the tax on sales, use, and other transactions. Exempts certain building materials used in the rehabilitation of real property located in an energy economic zone from the tax on sales, use, and other transactions. Provides for expiration of the tax exemption for energy economic zones, etc. CM 03/29/2011 Fav/CS CU 04/11/2011 CA BC	
2	**SB 1572** Siplin	Termination of Gas or Electric Service; Prohibits any utility from terminating a senior citizen's or low-income family's gas or electric service for nonpayment on any day, or on the following 2 calendar days, during which the National Weather Service forecasts extreme temperatures in the area in which the senior citizen or low-income family resides, etc. CU 04/11/2011 CF BC	
3	**SB 1934** Evers (Identical H 1389, Compare CS/H 1363, CS/S 1180)	Utility Right-of-way Relocation; Requires utility owners to remove or relocate at their expense utilities that interfere with public roads or rail corridors. Provides an exception if a local governmental entity acquires property where the utility was legally located prior to the acquisition. Adds an exception for certain permits issued in 1972. Provides for notice to utilities prior to commencement of work. Requires the initiation of removal by the utility. CU 04/11/2011 TR CA BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**CS/SB 950** Environmental Preservation and Conservation / Bennett (Similar CS/H 223)	Water and Wastewater Utilities; Provides for recovery through a quarterly surcharge of certain costs relating to water and wastewater system improvement projects. Defines a "non-revenue producing project." Requires utilities to submit surcharge tariffs reflecting the surcharge calculation for recovery of such costs to the Florida Public Service Commission for approval and to provide specified notice of such surcharge tariff filings, etc. EP 03/23/2011 Fav/CS CU 04/11/2011 BC	

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 Communications, Energy, and Public Utilities Committee

BILL: CS/SB 1460

INTRODUCER: Committee on Commerce and Tourism and Senator Bennett

SUBJECT: Energy Economic Zones

DATE: April 6, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	**Fav/CS**
2.	Wiehle	Carter	CU	**Pre-meeting**
3.			CA	
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill makes businesses within EEZs eligible for four sales tax exemptions and seven state tax refund or tax credit incentives. The total amount of these state incentives that can be claimed annually by eligible businesses is limited to $300,000 per EEZ community, for a total of $600,000.

The bill also adds EEZ communities to the list of counties and cities eligible for an alternative state review process of comprehensive planning activities.

The bill substantially amends ss. 163.32465, 212.08, 212.096, 220.181, 220.182, 220.183, 288.047, 288.063, 288.106, 377.809, and 445.003, F.S., and conforms a cross-reference in s. 220.191, F.S.

II. Present Situation:

EEZ Pilot Program

In 2009, the Legislature passed legislation that included creation of the Energy Economic Zone Pilot Program to select at least one local governmental entity interested in developing and

implementing strategies for energy-efficient land-use patterns, reduce greenhouse gas emissions, cultivate green economic development, encourage the generation of renewable electric energy, and promote manufacturing to create "green" products and jobs.[1]

DCA was designated the lead agency, but was directed to consult with the Department of Transportation in implementing the pilot program. The Governor's Office of Tourism, Trade, and Economic Development (OTTED), and the Florida Energy and Climate Commission were to provide technical assistance.

Applicants were required to submit to DCA the following information:

- Identification of the proposed "energy economic zone" (EEZ);
- A proposed strategic plan for development and redevelopment in the EEZ;
- An explanation of how the strategic plan would be consistent with the existing local comprehensive plan or include proposed plan amendments necessary to achieve consistency; and
- A list of the necessary comprehensive plan amendments.

The legislation specified that the strategic plan must integrate mixed-used and transportation facilities with the local government's land-use and development patterns to:

- Reduce reliance on automobiles as a form of transportation;
- Encourage certified green building developments and renewable energy systems;
- Encourage the creation of green jobs; and
- Demonstrate how local financial and regulatory incentives would be used in the EEZ.

DCA selected the City of Miami Beach and Sarasota County, which offered two sites, to participate in the 2-year pilot project. The two local-governmental entities submitted to DCA their initial strategy plans in February 2010, and continued to work with DCA and OTTED to develop their individual plans. The Legislature, during its 2010 session, passed a bill directing DCA and OTTED to develop recommendations on which economic development incentives and statutory revisions were necessary to accomplish the pilot program's goals.[2] DCA and OTTED were directed to work with the communities and with clean technology companies on ideas and to consider, when developing their recommendations, the following:

- Fiscal and regulatory incentives;
- A jobs tax credit and corporate property tax credit pursuant to ch. 220, F.S.; and
- Refunds and exemptions from the sales and use tax in ch. 212, F.S., for job creation, building materials, business property, and products used for clean technology industries and investments within the designated EEZs.

In February 2011, DCA issued a final report[3] that recommended making businesses and property owners within the two EEZs eligible for the same tax credit and tax refund incentives available in the state's 59 enterprise zones, which are distressed communities with pockets of high jobless and poverty rates.[4]

[1] Section 7, Chapter 2009-89, Laws of Florida
[2] Section 15, Chapter 2010-139, Laws of Florida
[3] On file with the Senate Commerce and Tourism Committee.
[4] Section 290.0058, F.S., specifies the criteria of enterprise zones.

The final report also recommended:

- Amending s. 163.32465(2), F.S., to include areas within EEZs in the Alternate State Review Pilot Program for expedited comprehensive plan amendment review.
- Amending s. 163.3164(34), F.S., to provide that areas within EEZs have the same planning flexibility pertaining to transportation concurrency and exemptions from DRI regulations.
- Modifying Part II of ch. 163, F.S., to encourage and reward buildings and developments that are Leadership in Energy and Environmental Design (LEED)[5] certified and use Low Impact Development Standards.
- Amending s. 163.3187, F.S., to allow comprehensive planning amendments for EEZs to be processed outside of the typical twice-yearly comp plan amendment cycle.
- Including EEZ transportation projects for funding consideration from the Economic Development Transportation Fund in s. 288.063, F.S.
- Encouraging local businesses to adopt streamlined permitting processes for businesses within EEZs.
- Modifying the current enterprise zone tax credits and tax refunds for use by businesses and property owners within EEZs.
- Amending s. 299.106, F.S., the Qualified Target Industry (QTI) tax refund program to remove certain wage requirements for businesses located in EEZs, and to allow local governments to add types of businesses that could qualify for the QTI program.
- Allowing businesses within EEZs to transfer their unused tax credits.
- Providing sales tax refunds for the purchase of products used in clean technology industries within an EEZ.

Pilot communities

The City of Miami Beach, which is a compact, dense, built-out urban area with 13,400 residents per square mile, is interested in using the EEZ to improve intermodal, energy-efficient transportation in the city and to explore opportunities to re-use or re-purpose existing infrastructure.

Sarasota County's two sites are the opposite of Miami Beach: one is a 1,000-acre undeveloped site and the other is its 7,000-acre Central County solid waste complex, where the county plans to build a methane gas-to-energy conversion plant.

The Florida Enterprise Zone Program

The Legislature created the enterprise zone program in 1982 to encourage economic development in economically distressed areas of the state by providing tax incentives designed to induce private investment that creates jobs and increases property values. There currently are 59 EZs, all of which were either created or reauthorized by the Legislature.

OTTED reports that between October 1, 2009, and September 30, 2010:[6]

[5] The U.S. Green Building Council developed these industry-accepted guidelines. More information is available at: http://www.usgbc.org/DisplayPage.aspx?CategoryID=19 Last visited March 22, 2011.

- 7,559 businesses moved into or were created in enterprise zones;
- 6,073 jobs were created by businesses there;
- About $67.6 million in state funds and nearly $20 million in local-government financial incentives were approved during that same period; and
- $54 million, or nearly 80 percent, of the state incentive funds went for state sales and use tax refunds for the purchase of building materials within enterprise zones).

Sections 290.001-290.016, F.S., authorize the creation of enterprise zones; establish criteria and goals for the program; require a strategic plan; require annual reporting to OTTED; and establish state incentives for businesses.

Florida's enterprise zones qualify for various incentives from corporate income tax and sales-and-use tax liabilities:

- Sales and use tax refunds:
  - Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone: Provides a refund for taxes paid on the purchase of certain building materials, up to $5,000 or 97 percent of the tax paid, whichever is less. For projects where at least 20 percent of the employees live in the enterprise zone, the refund is the lesser of $10,000 or 97 percent of the tax paid.
  - Business Equipment Used in Enterprise Zones: Provides a refund for taxes paid on the purchase of certain equipment, up to $5,000 or 97 percent of the tax paid, whichever is less. For projects where at least 20 percent of the employees live in the enterprise zone, the refund is the lesser of $10,000 or 97 percent of the tax paid.
  - Business Property Used in an Enterprise Zone: Provides a refund for sales taxes paid on the purchase of certain business property, up to $5,000 or 97 percent of the tax paid per parcel of property, whichever is less. The property also must have been used exclusively in an enterprise zone for at least 3 years.
  - Community Contribution Tax Credit: Provides 50-percent sales tax refund for donations made to local community development projects in enterprise zones.
- Sales and use tax credits:
  - Rural Enterprise Zone Jobs Credit against Sales Tax: Provides a tax credit for 20 percent, 30 percent, or 45 percent of wages paid to new employees, depending on where they live.
  - Urban Enterprise Zone Jobs Credit against Sales Tax: Provides a tax credit for 20 percent or 30 percent of wages paid to new employees, depending on where they live.
- Available state corporate income tax incentives for enterprise zones include:
  - Rural Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit equal to 20 percent, 30 percent, or 45 percent of wages paid to new employees, depending on where they live.

[6] Florida Enterprise Zone Program Annual Report, dated October 1, 2009 – September 30, 2010. On file with the Senate Commerce and Tourism Committee. Prepared by OTTED with information provided by the state Department of Revenue and the 59 local enterprise zone coordinators.

- Urban Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit for 20 percent or 30 percent of wages paid to new employees, depending on where they live.
- Enterprise Zone Property Tax Credit: Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.
- Community Contribution Tax Credit: Provides a 50-percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects located in enterprise zones.

- Sales tax exemptions:
  - Electrical Energy Used in an Enterprise Zone: Provides 50-percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy.

As mentioned above, the local incentives provided by cities and counties during the same 12-month period was close to $20 million. Examples of local incentives include: utility tax abatement, reduction of occupational license fees, reduced building permit fees or land development fees, and local funds for capital projects.

QTI tax refund program

The QTI Tax Refund Incentive Program was created in 1994 as part of a retooling of Florida's economic development efforts.[7] The QTI program was designed to encourage the recruitment or creation of higher-paying, higher-skilled jobs for Floridians, by awarding eligible businesses refunds of certain state or local taxes paid in exchange for creating jobs.

Eight industry sectors have been designated as "targeted industries": Clean Tech; Life Sciences; Information Technology; Aviation/Aerospace; Homeland Security/Defense; Financial/Professional Services; Emerging Technologies; and Other Manufacturing.[8] Within each sector are several specific types of target businesses.

The amount of the refund is based on the wages paid, number of jobs created, and where in the state the eligible business chooses to locate or expand, but the basic refund is $3,000 per employee over the term of the incentive agreement signed by the business and the Governor's Office of Tourism, Trade and Economic Development (OTTED). The per-employee refund amount can be as high as $11,000, if multiple conditions are met.

The QTI incentive is a refund against seven state taxes and the local ad valorem tax paid by eligible businesses. Most commonly, businesses have used the QTI to obtain reimbursements for ad valorem, state sales tax, and state corporate income tax liabilities.

A key feature of the QTI incentive is that the business must agree to pay at least 115 percent of the average private-sector wage of the state, the county or the standard metropolitan area in which the business is or will be located, but exceptions may be granted under specific criteria.

[7] Section 288.106, F.S.
[8] 2011 Qualified Targeted Industries for Incentives list on file with the Senate Commerce and Tourism Committee.

Typically, a cash or in-kind match is required from the local government, although this can be waived for rural counties or under other circumstances.

As a cash refund, the QTI incentive is paid by OTTED only after the yearly agreement conditions have been met. The duration of a QTI agreement is 3 to 4 years.

As of June 30, 2009, some 880 business projects have been recommended for the QTI incentive; 848 have been approved by the former Department of Commerce or OTTED; and 730 have entered into QTI agreements with the state. Of those 730 projects, 260 remain "active," meaning they are eligible to receive tax refunds through the QTI program. These 260 projects have committed to create 45,043 jobs, paying an average wage of $44,916.

As noted above, for FY 10-11, the Legislature appropriated $12.23 million to OTTED for use as tax refunds to Qualified Defense Contractor and Space Flight Business (QDSC) and Qualified Target Industry (QTI) tax refund program recipients.

Transportation Economic Development Fund

Section 288.063, F.S., provides state grants to improve transportation access and infrastructure for businesses that are planning to relocate or expand. This is commonly referred to as the "road fund." OTTED awards the grants to local governments where the businesses are located, to contract for the transportation improvements. OTTED considers a number of factors in selecting the projects, including:

- Jobs to be created by the business,
- Wages to be paid, and
- Whether the transportation improvement is necessary to induce the business to locate or expand in a particular community.

In FY 10-11, the Legislature appropriated $20 million for economic development transportation projects, of which $16.3 million was specifically earmarked, leaving $3.7 for general projects under OTTED's discretion.

Comprehensive Planning Requirements

Adopted by the 1985 Legislature, the Local Government Comprehensive Planning and Land Development Regulation Act - also known as Florida's Growth Management Act - requires all of Florida's 67 counties and 410 municipalities to adopt Local Government Comprehensive Plans that guide future growth and development.

Comprehensive plans contain chapters that address future land use, housing, transportation, infrastructure, coastal management, conservation, recreation and open space, intergovernmental coordination, and capital improvements.

A key component of the growth management act is its concurrency provision that requires many types of facilities and services, such as transportation systems, to be available concurrent with the impacts of development. In general, local governments must use a systematic process to ensure new development does not occur unless adequate transportation infrastructure is in place to support the growth. Transportation concurrency is a growth management strategy aimed at

ensuring that transportation facilities and services are available, or "concurrent" with the impacts of development.

To carry out transportation concurrency, local governments must define what constitutes an adequate level of service (LOS) for its transportation system and measure whether the service needs of a new development exceed existing capacity and scheduled improvements for that period. In 1992, Transportation Concurrency Management Areas were authorized, allowing an area-wide LOS standard (rather than facility-specific) to promote urban infill and redevelopment and provide greater mobility in those areas through alternatives such as public transit systems.

Subsequently, two additional relaxations of concurrency have been authorized: Transportation Concurrency Exception Areas (TCEA) and Long-term Transportation Concurrency Management Systems. Specifically, the TCEA is intended to reduce the adverse impact transportation concurrency may have on urban infill and redevelopment by exempting certain areas from the concurrency requirement. Long-term Transportation Concurrency Management Systems are intended to address significant backlogs of transportation projects.

Another aspect of growth management in Florida is the development of regional impact (DRI) review process. Section 380.06, F.S., governs the DRI program and establishes the basic process for DRI review. The DRI program is a vehicle that provides state and regional review of local land use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. Over the years several types of projects, or projects that meet certain thresholds, have been exempted from the DRI review process.

A third growth-management tool is the relatively new "density bonus." It was authorized by the Legislature in 2006 to encourage local governments to promote the building of affordable housing. One form a density bonus may take is allowing developers to build additional residential units in exchange for the provision of affordable housing. The amount of the bonus would be different for different local governments, and even different projects within each jurisdiction. Several Florida communities have proposed amendments to their comprehensive plans, for DCA review, to allow density bonuses.

The newest tool is the Alternative State Review Process, created in s. 163.32465(2) F.S. In 2007, the Legislature created the pilot program to provide an alternate, expedited process for plan amendments with limited state-agency review. The alternative state review process shortens the statutorily prescribed timeline for comprehensive plan amendments process from 136 days to 65 days.

Currently, Pinellas and Broward counties and the municipalities within those counties, plus the cities of Jacksonville, Miami, Tampa and Hialeah are statutorily named as participants in the pilot program.

III. Effect of Proposed Changes:

The bill makes businesses within EEZs eligible for 11 state tax exemptions, state tax refunds, and state tax credits that are used as economic development incentives. The bill also adds EEZ

communities created under s. 377.809, F.S., to the list of local government entities that can participate in the state's Alternate State Review Process for comprehensive plan amendments, potentially reducing by half the review time.

Section 1 amends s. 163.32465(2), F.S., to add EEZ communities created under s. 377.809, F.S., to the list of local government entities that can participate in the state's Alternate State Review Process for comprehensive plan amendments.

Section 2 amends s. 212.08, F.S., to create four sales and use tax exemptions for purchases made by businesses within EEZs. They are:

- Machinery and equipment used in the production of renewal energy within an EEZ.
- Building materials used in the construction or rehabilitation of energy-efficient structures of real property within an EEZ; the language related to the processes of claiming the tax refund and most of the definitions are nearly identical to the existing sales and use tax exemption for building materials used in enterprise zones.
- Business property purchased for use in an EEZ, to be taken as refund; the language is nearly identical to an exemption for business property used within a ch. 290, F.S., enterprise zone.
- Electrical energy used by a qualified business in an EEZ.

Section 3 amends s. 212.096, F.S., to extend the enterprise zone jobs tax credit against sales and use tax to businesses in the EEZs that meet the eligibility criteria.

Section 4 amends s. 220.181, F.S., to extend the enterprise zone jobs tax credit against corporate income tax liability to businesses within the EEZ that meet the eligibility criteria.

Section 5 amends s. 220.182, F.S., to extend the enterprise zone property tax credit against corporate income tax liability to businesses within the EEZs that meet the eligibility criteria.

Section 6 amends s. 220.183, F.S., to extend eligibility to sponsor projects for the Community Contribution Tax Credit to a local governing body which has an EEZ within its jurisdiction.

Section 7 amends s. 288.047, F.S., to add EEZs to the list of designated communities where businesses are eligible for a special set-aside of Quick Response Training funds. The other designated communities are enterprise zones and brownfield areas.

Section 8 amends s. 288.063, F.S., to add to the list of selection criteria for "road fund" incentive dollars the location of an economic development project in an EEZ.

Section 9 amends s. 288.106, F.S., the QTI tax refund incentive program, to make changes applicable to projects within EEZs. This section:

- Defines EEZs as areas designated pursuant to s. 377.809, F.S.;
- Defines "targeted industry business" to include any business engaged within one of the targeted industries identified by a local governing body of an energy economic zone pursuant to ordinance and approved by OTTED;

- Exempts a target industry business within an EEZ from having to meet the state target industry business criterion of being "market and resource independent," pursuant to the current s. 288.106(1)(t)4., F.S.;
- Adds targeted industry businesses within EEZs eligible to earn double the per-employee tax refund, and to receive higher tax refund subsidies, as do businesses in enterprise zones, annually and over the long-term;
- Waives the minimum wage requirement of at least 115 percent of the average area private sector wage for businesses in EEZs; and
- Waives the requirement that for EEZ businesses to receive a prorated QTI tax refund, the business must pay its employees wages of at least 115 percent of the average area private sector wage.

Section 10 amends s. 377.809, F.S., which created the EEZ pilot program. The bill modifies the statute to:

- Specify that beginning July 1, 2011, and after the adopting of a local ordinance by the local governing board for an EEZ, qualified businesses within the EEZ:
    - Are eligible for the 11 state financial incentives specified in earlier sections of the bill, but the bill elsewhere specifies the incentives cannot be claimed on tax forms until July 1, 2012; and
    - Are eligible to benefit from changes in the state growth management law related to expedited review of plan amendments and density and intensity bonuses for development.
- Reiterate that comp plan amendments related to EEZ projects are not subject to the twice-yearly window of review.
- Specify that the application of ch. 163, F.S., provisions in this section prevail if there is a conflict with similar provisions elsewhere in statute.
- Specify that any agency or judicial review of a comp plan amendment for a development within an EEZ is limited to the extent with which the amendment furthers the goals expressed in s. 377.809, F.S.
- Specify that, notwithstanding any law to the contrary, a public utility (as defined in s. 366.02(1), F.S.), may grant discounts of up to 50 percent on tariffed rates to small businesses within an EEZ, for a period not to exceed 5 years.
- Give projects located in an EEZ priority ranking, to the extent practicable, for grants administered by the Florida Energy and Climate Commission, other state incentive programs related to renewable or clean energy, or for grants from other sources such as qualified energy conservation bonds.
- Define the terms "energy-efficiency development" and "clean technology industries and businesses" is broadly defined as encompassing a "diverse range of products, services, and processes that harness renewable materials and energy sources and reduce the use of natural resources, reduce greenhouse gas emissions, and result in energy conservation."
- Require local governing boards whose jurisdictions includes an EEZ to adopt an ordinance in order for EEZ businesses to be able to access state incentives and use the alternate comp planning processes.
- Specify content of the EEZ ordinance, and allows the local governing board to revise the boundaries of its EEZ with DCA's approval.

- Specify that the total amount of tax credits, tax refunds, and tax exemptions that may be granted to businesses within each EEZ is capped at $300,000 per year per EEZ, for a total of $600,000 per year. Unused credits may be carried forward 5 years, and used by the business to defray future tax liability.
- Require the local governing board with jurisdiction over an EEZ to track and account for all levels of credits and refunds granted, and for credit amounts carried over from a previous year.
- Allow an eligible EEZ business, with approval from OTTED, to transfer any of the unused state tax credits it has received under the program, except for the premium insurance tax credit allowed under the community contribution tax credit program in s. 624.5105, F.S. Specifically:
    - Unused credits may be transferred no later than 5 years after being awarded, at which point they expire.
    - OTTED is directed to notify DOR of taxpayer elections and transfers.
    - An eligible business with unused credits may transfer any unused sales and use tax credits one time to one entity, and may transfer unused corporate income tax credits one time to up to four entities.
    - Entities receiving transferred credits have the same rights and limitations as the industry or business located in an EEZ that was awarded the tax credits, except that they may not subsequently transfer the tax credits.
- Require a report from DCA and OTTED to the Governor, President of the Senate, and Speaker of the House of Representatives by February 15, 2015, evaluating whether the pilot program has demonstrated success. Current law requires that report by February 15, 2012.

Section 11 amends s. 445.003, F.S., to make businesses within EEZs eligible for federal workforce grants.

Section 12 amends s.220.191, F.S., to conform a cross-reference.

Section 13 provides that the bill takes effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has not evaluated this bill. However, in April 2010, the REC met to evaluate the fiscal impact of a nearly identical bill filed during the 2010 legislative session. The REC, by consensus, adopted a ($300,000) cash reduction to the state General Revenue Fund in FY 11-12; a ($600,000) cash reduction in FY 12-13, and a ($900,000) cash reduction in FY 13-14.

B. Private Sector Impact:

Indeterminate, but likely positive, to the extent that the City of Miami Beach and Sarasota County use these incentives to successfully recruit businesses to their EEZs, or expand existing businesses, that will create jobs.

C. Government Sector Impact:

Indeterminate. DOR likely will incur some costs in modifying its computer software to track, record, and refund these new tax credits.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 10 of the bill creates the ability of EEZ businesses to transfer their unused credits over a period of 5 years, but does not establish a process for how and when this is done. Existing statutory provisions on tax-credit transfers are much more specific.

VIII. Additional Information:

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

CS by Commerce and Tourism Committee on March 29, 2011:
The committee adopted three amendments, which:

- Deleted a provision that would allow a business within an Economic Energy Zone that is not, for state purposes, a qualified target industry business to receive the QTI benefit if it meets the local ordinance's definition of a target industry for EEZ purposes;
- Clarified that the tax credits available to businesses within an Energy Economic Zone may be claimed on their tax returns beginning on July 1, 2012; and
- Clarified that businesses or projects within EEZs shall have priority, to the extent practicable, for state economic development incentives related to renewable or clean energy.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Communications, Energy, and Public Utilities (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (4) of section 377.809, Florida Statutes, is amended, and subsections (5) through (8) are added to that section, to read:

377.809 Energy Economic Zone Pilot Program.—

(4) ~~If the pilot project is ongoing,~~ The Department of Community Affairs, with the assistance of the Office of Tourism, Trade, and Economic Development, shall submit a report to the Governor, the President of the Senate, and the Speaker of the

House of Representatives by February 15, 2015 ~~2012~~, evaluating whether the pilot program has demonstrated success. The report shall contain recommendations with regard to whether the program should be expanded for use by other local governments and whether state policies should be revised to encourage the goals of the program.

(5) Beginning July 1, 2012, all the incentives and benefits provided to enterprise zones pursuant to state law shall be available to the energy economic zones designated by July 1, 2010, pursuant to s. 377.809. In order to provide incentives, no later than March 1, 2012, each local governing body having jurisdiction over an energy economic zone shall, by local ordinance, establish boundaries of the energy economic zone, specify applicable energy-efficiency standards, and determine eligibility criteria for application of state and local incentives and benefits in the energy economic zone. However, in order to receive benefits provided under s. 288.106, a business must be a qualified target industry business under s. 288.106 for state purposes. Boundaries may be revised by local ordinance. Such incentives and benefits include those in ss. 220.181, 220.182, 212.08, 220.183, 624.5105, 212.096, and 288.106 and the public utility discounts provided in s. 290.007(8). The exemption provided in s. 212.08(5)(c) shall be for renewable energy as defined in s. 377.803(4). For purposes of this section, any applicable requirements for employee residency for higher refund or credit thresholds shall be based on employee residency in the energy economic zone or an enterprise zone. A business in an energy economic zone may also be eligible for funding under ss. 288.047 and 445.003, and a

transportation project in an energy economic zone shall be provided priority in funding under s. 288.063. Other projects shall be given priority ranking to the extent practicable for grants administered under state energy programs.

(6) Effective July 1, 2012, the total amount of state credits, refunds, and exemptions that may be provided by the governing body of each energy economic zone to eligible businesses for energy-economic-zone incentives pursuant to subsection (5) is $300,000 per designated energy economic zone in any state fiscal year. A credit or refund that is applied for after each $300,000 limit is reached shall be disallowed by the governing body of the energy economic zone. If the $300,000 incentive cap is not fully used in any one state fiscal year by an energy economic zone, the unused amount under the cap may be carried forward for not more than 5 years. The local governing body having jurisdiction over the energy economic zone is responsible for allocating the incentives, for verifying that businesses receiving such incentives are eligible for the incentives provided, and for ensuring that the incentives provided do not exceed the cap for the state fiscal year.

(7) Upon approving an incentive for an eligible business, the governing body having jurisdiction over the energy economic zone shall provide the taxpayer with a certificate indicating the eligible businesses' name, federal identification number, date the incentive is provided, name of the energy economic zone, incentive type, and the incentive amount. The local governing body shall certify to the Department of Revenue or the Office of Tourism, Trade, and Economic Development, whichever is applicable, which businesses or properties are eligible to

receive any or all of the state incentives according to their statutory requirements. The governing body having jurisdiction over the energy economic zone shall provide a copy of the certificate to the Department of Revenue and the Office of Tourism, Trade, and Economic Development as notification that such incentives were approved for the specific eligible business or property. For incentives to be claimed against the sales and use tax under chapter 212, the Department of Revenue shall send, within 14 days after receipt, written instructions to an eligible business on how to claim the credit on a sales and use tax return initiated through an electronic data interchange. Any credit against the sales and use tax shall be deducted from any sales and use tax remitted by the dealer to the Department of Revenue by electronic funds transfer and may be deducted only on a sales and use tax return initiated through an electronic data interchange. The dealer shall separately state the credit on the electronic return. The net amount of tax due and payable must be remitted by electronic funds transfer. If the credit is larger than the amount owed on the sales and use tax return, such excess amounts may be carried forward for a period not to exceed 12 months following the date the credit is initially claimed.

(8) If all conditions are deemed met, the Office of Tourism, Trade, and Economic Development and the Department of Revenue may adopt emergency rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of this subsections (5)-(7). The emergency rules shall remain in effect for 6 months after the rules are adopted, and the rules may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

471818

Section 2. Paragraph (u) is added to subsection (24) of section 380.06, Florida Statutes, to read:

380.06 Developments of regional impact.—

(24) STATUTORY EXEMPTIONS.—

(u) Any development in an energy economic zone designated pursuant to s. 377.809, shall be exempt from this section upon approval of its local governing body.

If a use is exempt from review as a development of regional impact under paragraphs (a)-(s), but will be part of a larger project that is subject to review as a development of regional impact, the impact of the exempt use must be included in the review of the larger project, unless such exempt use involves a development of regional impact that includes a landowner, tenant, or user that has entered into a funding agreement with the Office of Tourism, Trade, and Economic Development under the Innovation Incentive Program and the agreement contemplates a state award of at least $50 million.

Section 3. This act shall take effect July 1, 2011.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to energy economic zones; amending s. 377.809, F.S.; deleting an obsolete provision; revising the date by which the Department of Community Affairs, with the assistance of the Office of Tourism,

Trade, and Economic Development, must submit a report to the Governor and Legislature evaluating whether the Energy Economic Zone Pilot Program has demonstrated success; requiring that all incentives and benefits provided to enterprise zones be made available to energy economic zones by a specified date; requiring each local governing body having jurisdiction over an energy economic zone to establish boundaries of the energy economic zone, specify applicable energy-efficiency standards, and determine eligibility criteria for application of state and local incentives and benefits; requiring that a business be a qualified target industry business for state purposes; providing that boundaries may be revised by local ordinance; specifying the incentives and benefits; requiring that applicable requirements for employee residency for higher refund or credit thresholds be based on employee residency in the energy economic zone or an enterprise zone; providing that certain businesses are eligible for funding and other businesses have priority for funding; providing a cap on the total amount of state credits, refunds, and exemptions that may be provided to eligible businesses for energy-economic-zone incentives; authorizing the unused amount of a credit to be carried forward for a limited period; providing that the local governing body having jurisdiction over the energy economic zone is responsible for allocating the incentives and verifying eligibility of businesses to receive

incentives; requiring the governing body to provide the taxpayer with a certificate indicating eligibility; requiring the local governing body to certify to the Department of Revenue or the Office of Tourism, Trade, and Economic Development which businesses or properties are eligible to receive state incentives; requiring the Department of Revenue to send written instructions to the eligible businesses on claiming the credit on a sales and use tax return initiated through an electronic data interchange; authorizing the Office of Tourism, Trade, and Economic Development and the Department of Revenue to adopt emergency rules; providing for renewal of the rules; amending s. 380.06, F.S.; providing that certain developments in an energy economic zone are exempt from review as a development of regional impact; providing an effective date.

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 Communications, Energy, and Public Utilities Committee

BILL:	SB 1572
INTRODUCER:	Senator Siplin
SUBJECT:	Termination of gas or electric service
DATE:	March 11, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Pre-meeting**
2.			CF	
3.			BC	
4.				
5.				
6.				

I. Summary:

The bill restricts the termination of a senior citizen's or low income family's electric or gas service for nonpayment on specified days associated with a National Weather Service (NWS) forecast that the temperatures in the area in which the senior citizen or low income family resides will be either 1) 35 degrees Fahrenheit or lower or 2) 95 degrees Fahrenheit or higher. The restriction prohibits the termination of the electric or gas service only if that service is the sole source by which "a space" is heated or cooled. The days on which the restriction applies are 1) any day the NWS forecasts that temperatures in the "area" in which the senior citizen or low income family resides will reach the temperatures specified in the bill; 2) the two calendar days following such a day; or 3) any day preceding a holiday or weekend for which the NWS has forecast that the temperatures will reach those specified in the bill.

The bill takes effect upon becoming a law.

The bill creates an as-yet unnumbered section of the Florida Statutes.

II. Present Situation:

Each public utility is required to furnish to each person who applies for service reasonably sufficient, adequate, and efficient service upon terms as required by the Public Service

Commission (PSC).[1] PSC rules provide the following relative to discontinuance of gas[2] and electric service.[3] The conditions under which a utility may discontinue service are:

- Non-compliance with or violation of any state or municipal law or regulation governing gas or electric service.
- Failure or refusal of the customer to correct any deficiencies or defects in his pipes or wires which are reported to him by the utility.
- Use of gas or energy for any other property or purpose than that described in the application.
- Failure or refusal to provide adequate space for the meter and service equipment of the utility.
- Failure or refusal to provide the utility with a deposit to insure payment of bills in accordance with the utility's regulation, provided that written notice, separate and apart from any bill for service, be given the customer.
- Neglect or refusal to provide safe and reasonable access to the utility for the purpose of reading meters or inspection and maintenance of equipment owned by the utility, provided that written notice, separate and apart from any bill for service, be given the customer.
- Non-payment of bills or non-compliance with the utility's rules and regulations, and only after there has been a diligent attempt to have the customer comply, including at least 5 working days' written notice to the customer, such notice being separate and apart from any bill for service, provided that those customers who so desire may designate a third party in the company's service area to receive a copy of such delinquent notice. For purposes of this subsection, "working day" means any day on which the utility's business office is open and the U.S. Mail is delivered. A utility cannot, however, discontinue service for nonpayment of a dishonored check service charge imposed by the utility.
- Without notice in the event of a condition known to the utility to be hazardous.
- Without notice in the event of tampering with meters or other facilities furnished and owned by the utility.
- Without notice in the event of unauthorized or fraudulent use of service. Whenever service is discontinued for fraudulent use of service, the utility may, before restoring service, require the customer to make at his own expense all changes in facilities or equipment necessary to eliminate illegal use and to pay an amount reasonably estimated as the loss in revenue resulting from such fraudulent use.

Except as provided, if a utility intends to discontinue service, it must notify the customer at least 5 working days prior to discontinuance of the reason for the discontinuance, and that service will cease unless the deficiency is corrected, resolved through mutual agreement, or successfully disputed by the customer. Service must be restored when the cause for discontinuance has been satisfactorily adjusted.

No utility can discontinue service to any non-commercial customer between 12:00 noon on a Friday and 8:00 a.m. the following Monday or between 12:00 noon on the day preceding a holiday and 8:00 a.m. the next working day, with the term "holiday" defined to mean New

[1] s. 366.03, F.S.
[2] Rule 25-7.089 Refusal or Discontinuance of Service by Utility, Florida Administrative Code
[3] Rule 25-6.105 Refusal or Discontinuance of Service by Utility, Florida Administrative Code

Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day. The prohibition does not apply when requested by the customer or necessary for safety.

III. Effect of Proposed Changes:

The bill restricts the termination of a senior citizen's or low income family's electric or gas service for nonpayment on specified days associated with a National Weather Service (NWS) forecast that the temperatures in the area in which the senior citizen or low income family resides will be either 1) 35 degrees Fahrenheit or lower or 2) 95 degrees Fahrenheit or higher. The restriction prohibits the termination of the electric or gas service only if that service is the sole source by which "a space" is heated or cooled. The days on which the restriction applies are 1) any day the NWS forecasts that temperatures in the "area" in which the senior citizen or low income family resides will reach the temperatures specified in the bill; 2) the two calendar days following such a day; or 3) any day preceding a holiday or weekend for which the NWS has forecast that the temperatures will reach those specified in the bill.

The bill takes effect upon becoming a law.

Other Potential Implications:

Application of the bill would be uncertain in some circumstances. For example, if a senior citizen resides with adult children and the utility has no notice of the senior citizens' residency, it may terminate service. Alternatively, a senior citizen or low-income family may rent and the utility service may be in the name of the landlord, or they may live in a multi-family dwelling sharing one meter, again in another person's name and again with no notice to the utility of the residency.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

There is no link between "a space" cooled or heated by the service and the senior citizen's or low-income family's residence.

The phrase "in the area in which the senior citizen or low-income family resides" is broad and ambiguous and could include a vast area.

It is uncertain why service should be maintained for 2 calendar days after a period of cold or hot temperatures.

The phrase "any day preceding a holiday or weekend" technically includes all days as all precede some weekend or holiday at some point in the future.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

143956

LEGISLATIVE ACTION

Senate . House

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The Committee on Communications, Energy, and Public Utilities (Smith) recommended the following:

Senate Amendment (with title amendment)

Delete line 21

and insert:

service is the only source by which the residence is cooled or heated,

Delete lines 25 - 26

and insert:

below or 95° Fahrenheit or above in the area of the utility in which the residence of the senior citizen or low-income family is located.

Delete lines 29 - 30

143956

and insert:
only source by which the residence is cooled or heated, for nonpayment of service on any day immediately preceding a holiday or weekend during

Delete lines 33 - 34

and insert:
Fahrenheit or above in the area of the utility in which the residence of the senior citizen or low-income family is located.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete lines 8 - 13

and insert:
area of the utility in which the senior citizen or low-income family resides; prohibiting any utility from terminating a senior citizen's or low-income family's gas or electric service for nonpayment on any day preceding a holiday or weekend during which the National Weather Service forecasts extreme temperatures in the area of the utility in

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 Communications, Energy, and Public Utilities Committee

BILL:	SB 1934
INTRODUCER:	Senator Evers
SUBJECT:	Utility Right-of-Way Relocation
DATE:	April 5, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	**Pre-meeting**
2.			TR	
3.			CA	
4.			BC	
5.				
6.				

I. Summary:

The bill clarifies that a utility is required to initiate the relevant work to remove or relocate a facility upon 30 days written notice from a transportation authority, not to complete it within that time. It also creates new circumstances under which a transportation authority is responsible for the cost of removal or relocation of a utility facility.

The bill takes effect July 1, 2011.

The bill substantially amends section 337.403 of the Florida Statutes.

II. Present Situation:

Section 337.403, F.S., requires utility owners to remove or relocate utilities at their own expense when the utility interferes with the safe continuous use, maintenance, improvement, extension or expansion of the road or rail corridor. The utility, upon 30 days written notice, is required to remove or relocate the utility at its own expense subject to the following exceptions:

- When the project is on the federal aid interstate system and federal funding is identified for at least 90 percent of the cost, the Florida Department of Transportation (FDOT) pays for the removal or relocation with federal funds;
- Where the work is done pursuant to joint agreement between FDOT and the utility and the cost of the utility improvement, installation, or removal exceeds the FDOT's official cost estimates for such work by 10 percent, FDOT payment is limited to the difference between the official estimate of the cost for all the work in the agreement plus 10 percent and the amount awarded for the work in the construction contract;

- When the work takes place before transportation construction commences, FDOT may participate in the cost of clearing and grubbing (i.e., the removal of stumps and roots) necessary for the utility work;
- When the utility was initially installed to serve only FDOT, its tenants, or both and its relocation is necessary for the construction of a transportation project, FDOT is responsible for the cost of relocating the utility. (For example, if a power line originally installed to supply electricity to a toll plaza must be relocated due to widening the toll road, the toll authority, not the power company, must pay the cost of moving the line.);
- If the utility has conveyed, subordinated, or relinquished a compensable property right to the authority for the purpose of accommodating the acquisition or use of the right-of-way by the authority without the agreement expressly addressing future responsibility for cost of removal or relocation of the utility, the authority bears the cost of such removal or relocation; and
- If the utility is an electric facility being relocated underground in order to enhance vehicular, bicycle, and pedestrian safety and in which ownership of the electric facility to be placed underground has been transferred from a private to a public utility within the past five years, DOT bears all costs of the relocation.

Generally, the 30-day relocation provision has been construed as a notice provision, and the utility does not need to be removed or relocated within 30 days. Often, an authority and a utility owner negotiate a period of time to reasonably accommodate the relocation and removal of the utility.

III. Effect of Proposed Changes:

The bill amends s. 337.403, F.S., to clarify that a utility is required to initiate the relevant work upon 30 days written notice, not to complete it within that time.

It also creates new circumstances under which a transportation authority is responsible for the cost of removal or relocation of a utility facility.

- If the transportation authority acquires property on which a utility is legally located, the authority bears the costs of removing or relocating that utility.
- For any permit issued in 1972 by FDOT to any utility when the utility was in possession of the permitted property and transferred its interest to FDOT and if master agreements between FDOT and the utility were entered into before any permits were issued, FDOT must pay for any relocation expenses affecting a compensable interest of the utility, notwithstanding any permit, statutory, or contractual language to the contrary. This provisions applies only to utilities located on the Turnpike Homestead extension and if the utility transferred its interest to the FDOT without compensation for future relocation expenses.

The bill takes effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate; the bill increases the number of instances in which FDOT may be responsible for the cost of relocating or removing utilities, however, the additional number cannot be determined at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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 Communications, Energy, and Public Utilities Committee

BILL:	CS/SB 950
INTRODUCER:	Committee on Environmental Preservation and Conservation and Senator Bennett
SUBJECT:	Water and Wastewater Utilities
DATE:	April 6, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiggins	Yeatman	EP	**Fav/CS**
2.	Wiehle	Carter	CU	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

The bill creates a mechanism for regulated water and wastewater utilities to recover, through a surcharge, incurred capital costs for investment in non-revenue producing system improvements. The bill defines eligible projects and the manner in which companies may recover costs through the surcharge.

The bill creates section 367.0819 of the Florida Statutes.

II. Present Situation:

Chapter 367, F.S., establishes the authority of the Public Service Commission (PSC or commission) to establish rates of regulated water and wastewater utilities. A regulated water or wastewater utility may only impose and collect rates and charges approved by the PSC.[1] Section 367.081(2) (a), F.S., further specifies that the PSC, "on its own motion or upon request of the utility, may fix rates for the utility that are just, reasonable, compensatory, and not unfairly discriminatory."[2] The section further provides that the PSC consider: the value and quality of the

[1] See s. 367.081, F.S.
[2] See s. 367.081(2)(a)1., F.S.

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.

Section 367.0822, F.S., authorizes a utility, in a limited proceeding, to come before the PSC for any matter under its jurisdiction including a request to adjust its rates. Within the proceeding, the PSC must identify issues to be considered and can, upon its discretion, expand the scope of the proceeding to other related matters. A limited proceeding cannot be used to adjust rates if the effect of the adjustment would be to change the last authorized rate of return.

Currently, infrastructure improvements have to be incorporated in utility rates via a PSC proceeding under either s. 367.081(2), F.S., or s. 367.0822, F.S. Current law does not permit these infrastructure improvement surcharges without an evidentiary hearing. According to s. 367.081(2), F.S., the portion of unutilized capacity beyond the five-year period cannot be recovered from current customers.

Section 367.091 (6), F.S., provides that an application through a tariff filing to establish, increase, or change a rate or charge, other than through a rate proceeding pursuant to ss. 367.081, or s. 367.101, F.S., must be accompanied by a cost justification. The statute further provides that the PSC may withhold consent to the operation of any or all portions of the new rate schedules by a vote to that effect within 60 days and must give a reason or statement of good cause for withholding its consent. The PSC must make its final decision on the application within eight months after the official date of filing.

The PSC typically approves or denies tariff filings, giving substantially affected persons a point of entry to file a petition and request a hearing to protest any points of contention with the decision. Substantially affected persons, including customers of the utility, may protest the Proposed Agency Action (PAA), potentially triggering a PSC evidentiary proceeding.

In its Report No. 08-63, the Office of Program Policy Analysis & Government Accountability (OPPAGA) addressed the "unique financial challenges" of small water and wastewater utilities regulated by the PSC. The OPPAGA report notes that these small utility systems, because of a lack of economies of scale, frequently face financial challenges in maintaining system reliability, operating in a cost-effective manner, retaining an adequate labor pool, sustaining a stable financial position, and complying with regulatory requirements. The report also notes that these small utility systems may be reluctant to file for rate increases due to the time and expense involved in rate proceedings and the desire to keep rates low in light of the fact that, in contrast to some larger utilities, they have fewer customers over which to spread costs. The report suggests that the long-term financial viability and adequate investment in infrastructure may suffer as a result.[3]

The OPPAGA report identifies some existing regulatory tools used to address these issues, including staff-assisted rate cases for small water and wastewater utilities, a price index that all

[3] *The PSC and Legislature Could Consider Several Options to Enhance Services and Consumer Protection,* Office of Program Analysis & Government Accountability, Report No. 08-63, released November 2008.

water and wastewater utilities may apply to major categories of operating costs without a hearing, and pass-through rate adjustments that all water and wastewater utilities may employ for specific types of costs without a hearing. Still, the report suggests that the PSC should monitor small water and wastewater utilities to ensure adequate investment in infrastructure and, if deemed necessary, should consider adopting additional regulatory tools. As an example of such a tool, the report discusses a capital improvement surcharge mechanism by which a temporary surcharge would be added to rates to enable expeditious recovery of costs for qualifying investments and expenditures.[4]

III. Effect of Proposed Changes:

The bill provides for the recovery of prudently incurred capital costs related to nonrevenue-producing projects to enhance water quality, fire protection reliability, and long-term water system viability through a surcharge. The term "nonrevenue-producing project" is defined to mean a project that is not constructed or installed for the purpose of serving a new customer.

Eligibility for surcharge

A project is eligible for recovery of costs through the surcharge if it is:

- Completed and placed into service after the test year upon which base rates were last established by the commission for the utility; and
- For the construction of nonrevenue-producing improvement projects that are used for the production, treatment, transmission, storage, distribution, or provision of potable or recycled water to the public or for the collection, transportation, or disposal of wastewater for the public.[5]

Steps to establish a surcharge

To establish a surcharge, a utility must file a proposed surcharge tariff with the PSC. The proposed surcharge tariff must establish a formula for the calculation of rates reflecting the surcharge, with the rates to provide for recovery of depreciation and return on investment for each eligible project. The return on investment for each eligible project must be based on the utility's last authorized pretax rate of return. The surcharge must be calculated, applied, and recovered in accordance with the utility's last authorized rate structure.

The utility also must file a sworn affirmation as to the accuracy of the figures and calculations upon which the surcharge is based, stating that the change in rates will not cause the utility to exceed the range of its last authorized rate of return on equity. Any person making a false

[4] *The PSC and Legislature Could Consider Several Options to Enhance Services and Consumer Protection*, Office of Program Analysis & Government Accountability, Report No. 08-63, released November 2008.

[5] These projects include, but are not limited to, water quality improvement projects designed to achieve primary or secondary water standards as determined by the Department of Environmental Protection, the United States Environmental Protection Agency, or any other governmental entity having similar regulatory jurisdiction; wastewater quality improvement projects; main, service line, and valve replacement projects; main relining and rehabilitation projects; fire and flushing hydrant installation and replacement projects; main extension to eliminate dead ends; interconnection projects; water, wastewater, and reuse meter installation and replacement projects; wastewater collection, replacement, relining, and rehabilitation projects; and manhole replacement and rehabilitation projects.

statement in the affirmation which he or she does not believe to be true in regard to any material matter commits a felony of the third degree.

The utility must also provide notice by mail of the initial surcharge tariff filing to each customer in the affected service areas and publish notice of the surcharge filing in a newspaper of general circulation in the affected service areas.

Upon approval of the surcharge tariff, the utility must maintain and make available for public inspection during normal business hours at each utility location or on the utility's website a detailed schedule for each completed project, including the plant account number and title, the category of the project, the project name and description, the cost of the project in the month of closing, and the month and year of closing.

Surcharge costs and oversight

If the utility meets these filing and notice requirements, the PSC must approve the proposed surcharge tariff as a matter of right without hearing within 60 days after the date of filing. The commission has no discretion on whether to approve the surcharge or the amount.

The bill does provide the following limitations on the amount of the surcharge, its effect on earnings, and the accuracy of the surcharge relative to actual costs.

- The total cumulative amount of the surcharge revenue recovered by the utility may not exceed 8 percent of the utility's total revenues for the preceding calendar year, excluding revenues collected through the surcharge.
- The surcharge is to be revaluated, and if necessary adjusted, on a quarterly basis to reflect the costs of eligible projects placed into service. The utility must file the supporting data to increase or reduce the surcharge with the commission for each revaluation, along with another sworn affirmation that the change in rates will not cause the utility to exceed the range of its last authorized rate of return on equity. The utility must contemporaneously deliver copies of the supporting data and the sworn affirmation to the Office of Public Counsel.
- The surcharge is also subject to an annual reconciliation of revenues and costs with the 12-month period to begin on the date the surcharge tariff is approved. Within 30 days after the end of each reconciliation period, the utility must file with the commission, and deliver to the Office of Public Counsel, a reconciliation report that compares the actual surcharge revenues received and the actual eligible costs incurred by the utility during the prior period, along with another sworn affirmation. A reconciliation report that meets these requirements must be approved without hearing within 45 days after filing. The difference between revenue and costs must be recovered or refunded, as appropriate, by the utility without hearing as an automatic adjustment to the subsequent surcharge calculation. Revenues in excess of system-improvement costs must be refunded with interest to customers pursuant to the commission's rule on interest for water and wastewater utilities.
- If, within 15 months after the filing of a utility's annual report, the commission finds that the utility exceeded the range of its last authorized rate of return on equity, the commission may order the utility to refund, with interest, the difference to the ratepayers and adjust rates accordingly.

- The bill also requires a bond or corporate undertaking in order for the utility to implement the surcharge.

If the utility obtains new base rates that provide for prospective recovery of costs that had previously been recovered under the surcharge, the surcharge amount is to be reset at zero as of the effective date of those base rates. During the proceeding to establish the new base rates, the commission may review the prudence of all projects subject to the surcharge. Revenues from the surcharges are subject to refund if the commission subsequently determines that the costs of a project were not prudently incurred or that the project is not used and useful in the public service, and any such refund must be made pursuant to the commission's rule on refunds for water and wastewater utilities.

The bill takes effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will encourage investment by water and wastewater utilities in infrastructure projects. Utilities who choose to undergo these capital improvements will incur costs for attorney's fees and consulting fees. If their request is protested, the companies will further incur costs associated with defending the request. The proposed changes might allow some companies to obtain quicker rate relief. These capital improvements may improve the job market for occupations related to executing those improvements. Customers of utilities who opt to use this new mechanism will incur surcharges associated with the water and wastewater improvement projects.

C. Government Sector Impact:

According to the PSC, there will be increased costs and up to two FTE's including the cost of two regulatory analysts.

In general, the bill allows more expedient recovery of infrastructure improvement investments by investor owned water and wastewater utilities if no substantially affected person formally protests the PSC's decision. Florida law requires the PSC to give substantially affected persons a point of entry to contest tariff decisions. The likelihood for consumer intervention escalates as the costs of the projects increase. It is not clear whether costly PSC proceedings can be avoided since the decision to approve a tariff may be protested, potentially triggering a PSC evidentiary proceeding. There will be staff time devoted to rulemaking, including, drafting forms as well as writing administrative procedures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the PSC, providing rulemaking authority to the PSC would permit the PSC and the industry to develop rule guidance on the appropriate return on equity and mechanisms for updating the procedures related to the collection of surcharges. Further, this could address some of the issues related to increased workload to the agency.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/SB 950 by the Committee on Environmental Preservation and Conservation on March 23, 2010:

- deletes "quarterly" as a payment schedule option for the surcharge;
- specifies that surcharge is calculated on the pre-tax rate of return;
- details customer notification requirements;
- requires the utilities to affirm financial data provided that would affect the surcharge calculation, including requiring a detailed reconciliation report, and imposes a third degree felony for providing false statements; and
- specifies that if within 15 months after the filing of a utility's annual report the PSC finds that the utility exceeded the authorized rate of return on equity the PSC may order the utility to offer refunds with interest to the customers and adjust the rates accordingly.

B. Amendments:

None.

623286

LEGISLATIVE ACTION

Senate . House

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The Committee on Communications, Energy, and Public Utilities (Braynon) recommended the following:

Senate Amendment (with title amendment)

Between lines 188 and 189
insert:

Section 2. Subsection (5) is added to section 180.191, Florida Statutes, to read:

180.191 Limitation on rates charged consumer outside city limits.—

(5) Any water and wastewater utility customer outside the boundaries of a municipality that is located within a county having a population of more than 1.5 million persons, as reported in the most recent United States Decennial Census, that

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was incorporated after 2002, and that has a population in excess of 80,000 persons at the time of its incorporation, is exempt from the rate-setting methodology set forth in subsection (1) which otherwise applies to consumers outside the boundaries of the municipality that provides water or wastewater services.

========== T I T L E A M E N D M E N T ==========

And the title is amended as follows:

Delete line 32

and insert:

conditions; amending s. 180.191, F.S.; providing an exemption from the rate-setting methodology used to set water and wastewater utility rates for consumers outside the boundaries of a municipality supplying the water or wastewater services; providing an effective date.