

By Representative Thrasher

1                                   A bill to be entitled  
 2           An act relating to water or wastewater systems;  
 3           amending s. 367.021, F.S.; defining  
 4           "environmental compliance costs"; limiting  
 5           certain determinations of the Florida Public  
 6           Service Commission; amending s. 367.022, F.S.;  
 7           providing a regulatory exemption for nonpotable  
 8           irrigation water, under certain circumstances;  
 9           amending s. 367.081, F.S.; revising procedure  
 10          in commission rate proceedings for  
 11          determinations regarding recovery of utility  
 12          property investments; providing for recovery of  
 13          environmental compliance costs; amending s.  
 14          367.171, F.S.; providing application of the  
 15          act; providing an effective date.

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 17 Be It Enacted by the Legislature of the State of Florida:

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 19           Section 1. Subsections (7) through (13) of section  
 20   367.021, Florida Statutes, are renumbered as subsections (8)  
 21   through (14), respectively, and a new subsection (7) is added  
 22   to said section to read:

23           367.021 Definitions.--As used in this chapter, the  
 24   following words or terms shall have the meanings indicated:

25           (7) "Environmental compliance costs" means all  
 26   reasonable expenses and a fair return on the investments  
 27   incurred in complying with federal, state, or local  
 28   environmental laws, rules, regulations, orders, ordinances, or  
 29   resolutions, or other such requirements. The commission shall  
 30   be bound by the determinations, permitting, and enforcement  
 31   decisions of the United States Environmental Protection

1 Agency, the Department of Environmental Protection, or a water  
2 management district, or other entity with jurisdiction, as to  
3 the need for, capacity of, and type of facilities, including  
4 land and processes, required for compliance, and the need for,  
5 capacity of, and type of facilities, including land and  
6 processes, to be included as part of any reuse system or  
7 project.

8 Section 2. Subsection (11) is added to section  
9 367.022, Florida Statutes, 1996 Supplement, to read:

10 367.022 Exemptions.--The following are not subject to  
11 regulation by the commission as a utility nor are they subject  
12 to the provisions of this chapter, except as expressly  
13 provided:

14 (11) Any person providing only nonpotable water for  
15 irrigation purposes in a geographic area where potable water  
16 service is available from a governmentally or privately owned  
17 utility or a private well.

18 Section 3. Subsection (2) of section 367.081, Florida  
19 Statutes, is amended to read:

20 367.081 Rates; procedure for fixing and changing.--

21 (2)(a) The commission shall, either upon request or  
22 upon its own motion, fix rates which are just, reasonable,  
23 compensatory, and not unfairly discriminatory. In every such  
24 proceeding, the commission shall consider the value and  
25 quality of the service and the cost of providing the service,  
26 which shall include, but not be limited to, debt interest; the  
27 requirements of the utility for working capital; maintenance,  
28 depreciation, tax, and operating expenses incurred in the  
29 operation of all property used and useful in the public  
30 service; and a fair return on the investment of the utility in  
31 property used and useful in the public service. However, the

1 commission shall not allow the inclusion of  
2 contributions-in-aid-of-construction in the rate base of any  
3 utility during a rate proceeding, nor shall it impute  
4 prospective future contributions-in-aid-of-construction  
5 against the utility's investment in property used and useful  
6 in the public service; and accumulated depreciation on such  
7 contributions-in-aid-of-construction shall not be used to  
8 reduce the rate base, nor shall depreciation on such  
9 contributed assets be considered a cost of providing utility  
10 service. ~~The commission shall also consider the investment of~~  
11 ~~the utility in land acquired or facilities constructed or to~~  
12 ~~be constructed in the public interest within a reasonable time~~  
13 ~~in the future, not to exceed, unless extended by the~~  
14 ~~commission, 24 months from the end of the historical test~~  
15 ~~period used to set final rates.~~

16 1. For purposes of such proceeding, to determine  
17 whether utility property, including land acquired or  
18 facilities constructed or to be constructed in the public  
19 interest, is "used and useful in the public service," the  
20 commission shall apply the following:

21 a. Utility property needed to serve current customers  
22 shall be considered fully used and useful in the public  
23 service.

24 b. Utility property needed to serve customers less  
25 than 6 years from the date of the commission's final action on  
26 a rate request as provided in subsection (6) shall be  
27 considered fully used and useful in the public service.

28 c. Utility property needed to serve customers 6 years  
29 or more but not more than 7 years from the date of the  
30 commission's final action on a rate request as provided in  
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1 subsection (6) shall be rebuttably presumed to be used and  
2 useful in the public service.

3 d. Utility property needed to serve customers more  
4 than 7 years from the date of the commission's final action on  
5 a rate request as provided in subsection (6) shall only be  
6 considered used and useful in the public service if the  
7 commission determines that the utility has presented clear and  
8 convincing evidence to justify such treatment.

9 2. Notwithstanding the provisions of subparagraph 1.,  
10 the commission shall approve rates for service that allow a  
11 utility to recover the full amount of environmental compliance  
12 costs from customers. Rates for service shall not include  
13 allowance for funds prudently invested or similar charges.

14 (b) In establishing initial rates for a utility, the  
15 commission may project the financial and operational data as  
16 set out in paragraph (a) to a point in time when the utility  
17 is expected to be operating at a reasonable level of capacity.

18 Section 4. Subsections (6) and (8) of section 367.171,  
19 Florida Statutes, 1996 Supplement, are amended to read:

20 367.171 Effectiveness of this chapter.--

21 (6) Any county in which utilities as herein defined  
22 were regulated by the commission on or after January 1, 1980,  
23 which subsequently cease to be so regulated, shall, within 90  
24 days of the cessation of commission regulation or the  
25 effective date of this act, adopt and follow as minimum  
26 standards of regulation the provisions of s. 367.021, s.  
27 367.081, except for paragraph (4)(a), and ss. 367.0817 and ~~s.~~  
28 367.082, except that the word "commission" shall be read as  
29 "the governing body of such county" when the context implies  
30 or admits. The authorized rate of return shall be no less than  
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1 the weighted cost of the capital of the utility, including  
2 debt and equity.

3 (8) Each county which is excluded from the provisions  
4 of this chapter shall regulate the rates of all utilities in  
5 that county which would otherwise be subject to regulation by  
6 the commission pursuant to ss. 367.021, s-367.081(1), (2),  
7 (3), and (6), and 367.0817. The county shall not regulate the  
8 rates or charges of any system or facility which would  
9 otherwise be exempt from commission regulation pursuant to s.  
10 367.022(2). For this purpose the county or its agency shall  
11 proceed as though the county or agency is the commission.

12 Section 5. This act shall take effect upon becoming a  
13 law.

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15 HOUSE SUMMARY

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17 With respect to regulation of water and wastewater  
18 utilities, defines "environmental compliance costs" to  
19 include all reasonable expenses and a fair return on the  
20 investments incurred in complying with governmental  
21 regulation. Binds determinations of the Florida Public  
22 Service Commission with respect to such costs to  
23 requirements for compliance with the decisions of  
24 specified governmental regulatory entities. Provides a  
25 regulatory exemption for providers of only nonpotable  
26 water for irrigation where potable water is available  
27 from described sources. In commission rate proceedings  
28 determinations regarding recovery of utility property  
29 investments, provides criteria for determining whether  
30 the property is "used and useful in the public service"  
31 and provides for recovery of the full amount of  
environmentally required costs from customers.