

STORAGE NAME: h1715.uco

DATE: April 7, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND COMMUNICATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1715

RELATING TO: Water and Wastewater Treatment

SPONSOR(S): Rep. Argenziano

STATUTE(S) AFFECTED: Sections 367.022, 367.071, 367.081, 367.0814, 367.082, 367.145,
367.165, Florida Statutes

COMPANION BILL(S): SB 592

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES AND COMMUNICATIONS
- (2) WATER AND RESOURCE MANAGEMENT
- (3) TRANSPORTATION AND ECONOMIC DEVELOPMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill would amend Chapter 367, Florida Statutes, entitled Water and Wastewater Systems by deleting for resellers of water and wastewater some exemption status requirements.

The bill would allow the transactions of section 367.071, Florida Statutes, to certain exempt entities for water and wastewater facilities to be a matter of right for the PSC.

The bill would provide procedures to pass through a rate decrease under certain circumstances.

The bill would allow an interim rate relief process in staff-assisted rate cases.

The bill adds language which clarifies the method used for determining and adopting interim rates or revenues subject to refund in standard rate cases.

The bill imposes a continuing liability of up to six months on a utility for regulatory assessment fees during the pendency of rate cases. The bill would also require payment of application fees for rate relief for reuse projects, and provide a payment plan for certain application fees, pending approval of the plan by Department of Banking and Finance.

The bill imposes additional conditions on a utility operator in the event of facility abandonment.

The bill would take effect July 1, 1997.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Chapter 367, Florida Statutes, authorizes the Florida Public Service Commission (PSC) to have exclusive jurisdiction over each privately owned water and wastewater utility with respect to its authority, service, and rates. However, this jurisdiction is not applicable to utilities located in counties that have rescinded their PSC jurisdictional authority, in accordance with the provisions of section 367.171, Florida Statutes, unless the utility's service "traverses county boundaries". Pursuant to section 367.011, Florida Statutes, regulation of utilities is declared to be in the public interest, and this law is an exercise of the police power of the state for the protection of the public health, safety, and welfare

Pursuant to section 367.022, Florida Statutes, the following are not subject to regulation by PSC as a utility nor are they subject to the provisions of this chapter, except as expressly provided: 1) The sale, distribution, or furnishing of bottled water; 2) Systems owned, operated, managed, or controlled by governmental authorities, including wastewater facilities operated by private firms under wastewater facility privatization contracts as defined in section 153.91, Florida Statutes; 3) Manufacturers providing service solely in connection with their operations; 4) Public lodging establishments providing service solely in connection with service to their guests; 5) Landlords providing service to their tenants without specific compensation for the service; 6) Systems with the capacity of proposed capacity to serve 100 or fewer persons; 7) Nonprofit corporations, associations or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives; 8) Any person who resells water or wastewater service at a rate or charge which does not exceed the actual purchase price thereof, if such person files at least annually with the commission a list of charges and rates for all water service sold, the source and actual purchase price thereof, and any other information required by the commission to justify the exemption; but such person is subject to the provisions of section 367.122, Florida Statutes. 9) Wastewater treatment plants operated exclusively for disposing of industrial wastewater; and 10) The sale of bulk supplies of desalinated water to a governmental authority.

According to section 367.071(4)(a), Florida Statutes, the sale of facilities, in whole or part, to a governmental authority is a matter of right. However the sale, assignment and transfer of certificates of authorization facilities, or control to another entity is subject to the provisions of section 367.045, Florida Statutes, whereby a utility applying for an initial certificate of authorization from the PSC shall provide notice of the application to persons prescribed by commission rule; provide all information required by rule or order of the commission; file schedules of all rates, classifications and charges for service of every kind; file an application fee; and submit an affidavit that the applicant provided notice.

Additionally, a utility may not delete or extend its service outside the area described in its initial certificate. In order to apply for an amended certificate, a utility must fulfill the same requirements for an initial certificate plus provide a reference to the number of the most recent order of the commission establishing or amending the applicants's rates and charges and submit an affidavit that the utility has tariffs and annual reports on file with the commission. If the commission does not receive written objection to the notice within 30 days, the commission may dispose of the application without hearing. If the an

applicant, a consumer, a utility, or the Public Counsel is dissatisfied with the disposition, it may bring a proceeding under section 120.57, Florida Statutes.

Rate setting procedures are set forth in section 367.081, Florida Statutes, prescribing that a utility may only charge rates and charges that have been approved by the commission, except as provided in sections 367.081(4), Florida Statutes, whereby a utility adjusts its rates without PSC action based on the price increase or decrease index for major categories of operating costs incurred by utilities subject to PSC jurisdiction based on the most recent 12-month historical data available, or section 367.081(6), Florida Statutes, the commission may withhold consent to the operation of any rate request or any portion thereof by reason or statement of good cause to withhold, a utility may only charge rates and charges that have been approved .

A utility may automatically pass-through to consumers rate increase adjustments based on certain costs including purchased water or sewage treatment, purchased power from electricity suppliers, ad valorem tax increases, water quality testing requirements mandated by the Department of Environmental Regulation and the federal Environmental Protection Agency, and increased regulatory fees. The pass-through occurs automatically without hearing. The utility, however, must file a verified notice with the PSC, within 45 days of implementing the rate increase, stating that the rate change does not exceed the utility's authorized rate of return. The applicability of the automatic pass-through provision to a rate decrease adjustment is not clear. The PSC has recently held a proceeding to show cause why utilities should not be fined for failure to pass through adjusted rates to reflect decreases in costs.

By commission rules and pursuant to section 367.0814, Florida Statutes: 1) A water or wastewater utility whose gross annual revenues are \$150,000 or less may request and obtain staff assistance for the purpose of changing its rates and charges. A utility may request staff assistance by filing an application with the commission. 2)The commission may establish standards and procedures whereby rates and charges of small utilities may be set using criteria other than those set forth in section 367.081(1), (2)(a), and (3), Florida Statutes. These provisions provide a procedure for small utilities to obtain staff-assisted rate cases without experiencing financial hardship from obtaining consultants to compile financial and engineering data requirements for the case.

Pursuant to section 367.0814(7), Florida Statutes, the PSC is authorized to establish standards and procedures whereby rates and charges of small utilities may be set using criteria other than those set forth in section 367.081(1), (2)(a), and (3), Florida Statutes. These rates may be based on the standard rate of return or on an operating expense analysis. For a staff assisted rate case for utilities under this category, the PSC has 15 months after the official date of filing to issue a final order. The standard rate case for a large utility is usually disposed of in eight months.

Under the provisions of section 367.082, Florida Statutes, during any proceeding for a change of rates, the commission may, upon application, authorize the collection of interim rates until a final disposition is entered. These interim rates may be based upon a test period different from the test period used in the request for permanent rate relief. To establish a prima facie entitlement for interim relief, the commission, the petitioning party, the utility or the regulated company must demonstrate that the utility is earning outside the range of reasonableness on rate of return calculated in accordance with subsection (5).

In setting interim rates or setting revenues subject to refund, the commission is required to determine the revenue deficiency or excess by calculating the difference between the achieved rate of return and the required rate of return of a utility applied to an average investment rate base or an end-of-period investment rate base.

The achieved rate of return means the rate of return earned by the company for the most recent 12-month period. The achieved rate of return must be calculated by applying appropriate adjustments consistent with those which were used in the most recent individual rate proceeding of the utility or regulated company and annualizing any rate changes occurring during such period. The required rate of return is calculated as the weighted average cost of capital for the most recent 12-month period, using the last authorized rate of return on equity of the utility or regulated company, the current embedded cost of fixed-rate capital, the actual cost of short-term debt, the actual cost of variable-cost debt, and the actual cost of other sources of capital which were used in the last individual rate proceeding of the utility or regulated company.

In a proceeding for an interim increase, the term "last authorized rate of return on equity" used in section 367.082(5)(b)2, Florida Statutes, means the minimum of the range of the last authorized rate of return on equity established in the most recent individual rate proceeding of the utility or regulated company. The last authorized return on equity for purposes of this subsection shall be established only: in the most recent rate case of the utility; in a limited scope proceeding for the individual utility; or by voluntary stipulation of the utility approved by the commission pursuant to section 367.081(4)(f), Florida Statutes.

If a utility becomes exempt from PSC regulation during the pendency of a rate case, the request for rate relief is withdrawn, interim rates discontinued, and money collected refunded to customers with interest.

A utility filing an application for staff assistance the official date of filing is established as 30 days after official acceptance by the commission of the application. The commission may deny an application if the fee, as provided by section 367.145, Florida Statutes, is not remitted within 30 days after acceptance. The provisions of section 367.081(1), (2)(a), and (3), Florida Statutes, apply in determining the utility's rates and charges. In securing staff assistance, the utility agrees to accept the final rates and charges unless they produce less revenue than the existing rates generate. In the event of a protest or appeal by a party other than the utility, the commission may provide for temporary rates subject to refund with interest. If a utility becomes exempt from commission regulation during the pendency of a staff-assisted rate case, the request for relief is withdrawn, temporary rates are discontinued, and monies collected pursuant the temporary rates are refunded to the customers of the utility with interest.

Regulatory assessment and application fees are governed by section 367.145, Florida Statutes. Under the provisions of section 367.145, Florida Statutes, the commission collects application and regulatory fees based upon the applicability of different variables. The fees collected by the commission pursuant to this section are used to cover the cost of regulating water and wastewater systems. However, section 367.145(2), Florida Statutes, provides in part that:

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Each utility shall pay an application fee, established by the commission, for an original certificate of authorization. . .and when this chapter becomes applicable to a county in accordance with s. 367.171.

Pursuant to section 367.171, Florida Statutes, a county, under resolution or declaration by the appropriate county board, may rescind PSC regulatory authority, and all utilities therefore fall under the jurisdiction of the county.

The application fee stipulated in section 367.145, Florida Statutes, may not exceed \$4,500 and all fee payments are deposited in accordance with section 350.113, Florida Statutes.

Pursuant to section 350.113, Florida Statutes:

Each regulated company under the jurisdiction of the commission, which company was in operation for the preceding 6-month period, shall pay to the commission within 30 days following the end of each 6-month period commencing June 30, 1977. . .(e.s.)

Section 350.113, Florida Statutes, also requires that the commission provide at least a 45 days written notice prior to the date that the fee payment is due. Failure to pay at that time results in 5 percent of the amount due penalty, and will increase 5 percent for each 30-day period in which the fee is not paid up to a total of 25 percent, plus interest, and all cost of collection. Extension provisions are also in place in this section.

Section 367.165, Florida Statutes, provides that it is the intent of the Legislature that water or wastewater service to the customers of a utility not be interrupted by the abandonment or placement into receivership of a utility.

Pursuant to section 365.165(1), Florida Statutes, no person, lessee, trustee, or receiver owning, operating, managing, or controlling a utility shall not abandon the utility without giving 60 days' notice to the county or counties in which the utility serves. This violation is a first degree misdemeanor, punishable as provided in sections 775.082 and 775.083, Florida Statutes. Each day of such abandonment constitutes a separate offense, and the commission may impose a penalty for each such offense of not more that \$5,000, or may amend, suspend, or revoke its certificate of authorization; each day of such abandonment without prior notice constitutes a separate offense.

B. EFFECT OF PROPOSED CHANGES:

The bill would delete the requirements of section 367.022(8), Florida Statutes, which require resellers of water and wastewater to file an annual report and perform meter testing as justification for their exempt status.

The bill allow the transactions of section 367.071, Florida Statutes, to entities exempt under section 367.022(7), Florida Statutes, for water and wastewater facilities to be a matter of right for the PSC.

The bill would require that under section 367.081(4)(b), Florida Statutes, a utility must pass through any decrease in expenses identified in this subsection within 30 days after the effective date of the decrease regardless of the range of return.

The bill would amend section 367.081, Florida Statutes, to establish an interim rate relief process pending final order. It would require any adjustments to the interim test period be substantiated, and, to establish interim relief, there must be a demonstration that expenses exceed revenues or that earnings are outside the range of reasonableness on a rate of return as calculated in accordance with section 367.082(5), Florida Statutes. The bill would further require secured guarantee in specific forms for interim rates subject to refund.

The bill would add the words "or interim" to section 367.0814(8), Florida Statutes. This would provide that previously approved interim rates be discontinued, and refunded to the utility customers with interest, if collected during a staff-assisted rate case in the event the utility becomes exempt to commission regulation.

The bill would delete from section 367.082, Florida Statutes, the commission's ability to use the projected test year rate base when determining the interim rates or revenues subject to refund during any proceeding for a change of rate.

The bill would add language to sections 367.082(5)(a), 367.082(5)(b)1, 367.082(5)(b)2, Florida Statutes, which clarifies the method used for determining interim rates or revenues subject to refund in standard rate cases.

The bill would impose, by adding a new subsection (a) to section 367.145, Florida Statutes, a continuation of liability of up to six months on a utility for regulatory assessment fees during the pendency of its rate case.

The bill would include in section 367.0817, Florida Statutes, reuse projects, in the series of instances when a utility may be assessed an application fee by the commission. Additionally, the bill would allow the commission the discretion of providing a payment plan for the application fee associated with proceedings under section 367.0814, Florida Statutes, (staff-assisted rate cases).

The bill would, in section 367.165, Florida Statutes, define the term "utility operator" for the purposes of abandonment. It would increase the number of days in which to notice an intent to abandon a facility in subsection (2) from 60 days to 90 days, and would clarify that a violation of this section would be a misdemeanor of the first degree.

The bill would add subsection (3) to section 367.165, Florida Statutes, which establishes the Legislature's intent that the public interest requires a utility to have ownership of the facilities and ownership or continued use of the land upon which the utility is located. If the land upon which the utility is located is not in the name of the utility, the operator is responsible for providing long-term, continued use of the land by the subsequent operator at reasonable terms. In addition, upon notice of abandonment all rights to utility property, both real and personal are relinquished.

The bill would add subsection (5) to section 367.165, Florida Statutes, which provides that when the circuit court appoints a receiver all books and records shall be transferred to the receiver. If a utility operator fails to relinquish all utility property or provide for the

continued use of the land in accordance with this section, the court is required to order compliance.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

It increases the ability of circuit courts to settle matters relating to the appointment of a receiver when water or wastewater facilities are abandoned.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The PSC will have the power to handle the sale, transfer, or assignment of water or wastewater facilities to certain exempt entities as a matter of right.

(3) any entitlement to a government service or benefit?

N/A.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A.

- b. Does the bill require or authorize an increase in any fees?

N/A.

- c. Does the bill reduce total taxes, both rates and revenues?

N/A.

- d. Does the bill reduce total fees, both rates and revenues?

N/A.

- e. Does the bill authorize any fee or tax increase by any local government?

N/A.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A.

(2) Who makes the decisions?

N/A.

(3) Are private alternatives permitted?

N/A.

(4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION RESEARCH:

Please see "Effect of Proposed Changes" section.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

As of July 1, 1996, the PSC lost positions that identified and verified the exemptions listed in section 367.022, Florida Statutes. As a result of staff reductions, these entities and individuals are now presumed exempt.

The Florida Waterworks Association has express a concern that requiring a refund in every instance that an expense is reduced will accelerate the need for a rate proceeding if the utility is earning at or below its range at that time. The Florida Public Service Commission agrees with this comment.

The Association also opposes the elimination of the PSC's discretion to allow the use of a projected test year in connection with interim rates and supports clarifying the manner a projected test year would be implemented. The industry feels that without a projected test year, it will be denied an opportunity to earn on assets which become used and useful during a rate proceeding. When this does occur, a utility must either file for a limited

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proceeding or another rate case. The Florida Public Service Commission supports elimination of this discretion.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

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