

By Representative Argenziano

1                                   A bill to be entitled  
2           An act relating to the "Water and Wastewater  
3           Treatment Regulatory Law"; amending s. 367.022,  
4           F.S.; deleting the requirements for an exempt  
5           reseller's annual reports and meter testing;  
6           amending s. 367.071, F.S.; providing that the  
7           transfer of a utility to certain exempt  
8           nonprofit entities is to be treated as a matter  
9           of right by the Public Service Commission;  
10          amending s. 367.081, F.S.; providing a  
11          procedure for the handling of a decrease in  
12          expenses, under certain circumstances; amending  
13          s. 367.0814, F.S.; allowing interim rates in  
14          staff-assisted rate cases and providing  
15          requirements; amending s. 367.082, F.S.;  
16          providing procedures for adopting interim  
17          rates; amending s. 367.145, F.S.; providing for  
18          regulatory assessment fees when jurisdiction is  
19          transferred from the commission to a county;  
20          authorizing a fee for application for rate  
21          relief for a reuse project; authorizing a  
22          payment plan for certain application fees;  
23          requiring approval of the plan by the  
24          Department of Banking and Finance; amending s.  
25          367.165, F.S.; providing additional  
26          requirements to ensure that utility service is  
27          not interrupted by the abandonment or  
28          receivership of a utility; providing a penalty;  
29          providing an effective date.

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

1           Section 1. Subsection (8) of section 367.022, Florida  
2 Statutes, 1996 Supplement, is amended to read:

3           367.022 Exemptions.--The following are not subject to  
4 regulation by the commission as a utility nor are they subject  
5 to the provisions of this chapter, except as expressly  
6 provided:

7           (7) Nonprofit corporations, associations, or  
8 cooperatives providing service solely to members who own and  
9 control such nonprofit corporations, associations, or  
10 cooperatives; and

11           (8) Any person who resells water or wastewater service  
12 at a rate or charge that ~~which~~ does not exceed the actual  
13 purchase price thereof, ~~if such person files at least annually~~  
14 ~~with the commission a list of charges and rates for all water~~  
15 ~~service sold, the source and actual purchase price thereof,~~  
16 ~~and any other information required by the commission to~~  
17 ~~justify the exemption; but such person is subject to the~~  
18 ~~provisions of s. 367.122.~~

19           Section 2. Paragraph (a) of subsection (4) of section  
20 367.071, Florida Statutes, is amended to read:

21           367.071 Sale, assignment, or transfer of certificate  
22 of authorization, facilities, or control.--

23           (4) An application shall be disposed of as provided in  
24 s. 367.045, except that:

25           (a) The sale of facilities, in whole or part, to a  
26 governmental authority or to an entity exempt under s.  
27 367.022(7) shall be approved as a matter of right; however,  
28 the acquiring entity ~~governmental authority~~ shall, prior to  
29 taking any official action, obtain from the utility or  
30 commission with respect to the facilities to be sold the most  
31 recent available income and expense statement, balance sheet,

1 and statement of rate base for regulatory purposes and  
2 contributions-in-aid-of-construction. Any request for rate  
3 relief pending before the commission at the time of sale is  
4 deemed to have been withdrawn. Interim rates, if previously  
5 approved by the commission, must be discontinued, and any  
6 money collected pursuant to interim rate relief must be  
7 refunded to the customers of the utility with interest.

8 Section 3. Paragraph (b) of subsection (4) of section  
9 367.081, Florida Statutes, is amended to read:

10 367.081 Rates; procedure for fixing and changing.--

11 (4)

12 (b) The approved rates of any utility which receives  
13 all or any portion of its utility service from a governmental  
14 authority or from a water or wastewater utility regulated by  
15 the commission and which redistributes that service to its  
16 utility customers shall be automatically increased or  
17 decreased without hearing, upon verified notice to the  
18 commission 45 days prior to its implementation of the increase  
19 or decrease that the rates charged by the governmental  
20 authority or other utility have changed. The approved rates of  
21 any utility which is subject to an increase or decrease in the  
22 rates or fees that it is charged for electric power, the  
23 amount of ad valorem taxes assessed against its used and  
24 useful property, the fees charged by the Department of  
25 Environmental Protection in connection with the National  
26 Pollutant Discharge Elimination System Program, or the  
27 regulatory assessment fees imposed upon it by the commission  
28 shall be increased or decreased by the utility, without action  
29 by the commission, upon verified notice to the commission 45  
30 days prior to its implementation of the increase or decrease  
31 that the rates charged by the supplier of the electric power

1 or the taxes imposed by the governmental authority, or the  
2 regulatory assessment fees imposed upon it by the commission  
3 have changed. The new rates authorized shall reflect the  
4 amount of the change of the ad valorem taxes or rates imposed  
5 upon the utility by the governmental authority, other utility,  
6 or supplier of electric power, or the regulatory assessment  
7 fees imposed upon it by the commission. The approved rates of  
8 any utility shall be automatically increased, without hearing,  
9 upon verified notice to the commission 45 days prior to  
10 implementation of the increase that costs have been incurred  
11 for water quality or wastewater quality testing required by  
12 the Department of Environmental Protection. The new rates  
13 authorized shall reflect, on an amortized basis, the cost of,  
14 or the amount of change in the cost of, required water quality  
15 or wastewater quality testing performed by laboratories  
16 approved by the Department of Environmental Protection for  
17 that purpose. The new rates, however, shall not reflect the  
18 costs of any required water quality or wastewater quality  
19 testing already included in a utility's rates. A utility may  
20 not use this procedure to increase its rates as a result of  
21 water quality or wastewater quality testing or an increase in  
22 the cost of purchased water services, sewer services, or  
23 electric power or in assessed ad valorem taxes, which increase  
24 was initiated more than 12 months before the filing by the  
25 utility. The provisions of this subsection do not prevent a  
26 utility from seeking a change in rates pursuant to the  
27 provisions of subsection (2). If a utility's rates have been  
28 adjusted to pass through an increase in any of the expenses  
29 identified in this subsection, it shall pass through a  
30 subsequent decrease in the respective expense. In such case, a  
31 utility is required to file an application for the pass

1 through decrease within 30 days after the effective date of  
2 the decrease.

3 Section 4. Section 367.0814, Florida Statutes, is  
4 amended to read:

5 367.0814 Rates and charges; requests for staff  
6 assistance in changing.--

7 (1) The commission may establish rules by which a  
8 water or wastewater utility whose gross annual revenues are  
9 \$150,000 or less may request and obtain staff assistance for  
10 the purpose of changing its rates and charges. A utility may  
11 request staff assistance by filing an application with the  
12 commission.

13 (2) The official date of filing is established as 30  
14 days after official acceptance by the commission of the  
15 application. If a utility does not remit a fee, as provided  
16 by s. 367.145, within 30 days after acceptance, the commission  
17 may deny the application. The commission has 15 months after  
18 the official date of filing within which to issue a final  
19 order.

20 (3) The provisions of s. 367.081(1), (2)(a), and (3)  
21 shall apply in determining the utility's rates and charges.

22 (4) The commission may, upon its own motion, or upon  
23 petition from the regulated utility, authorize the collection  
24 of interim rates until the effective date of the final order.  
25 Any adjustments to the interim test period must be known and  
26 readily substantiated. To establish interim relief, there must  
27 be a demonstration that the operating expenses exceed the  
28 revenues of the regulated utility, or that the regulated  
29 utility is earning outside the range of reasonableness on rate  
30 of return calculated in accordance with s. 367.082(5).

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1           (5) The commission may require that the difference  
2 between the interim rates and the previously authorized rates  
3 be collected under bond, escrow, letter of credit, or  
4 corporate undertaking subject to refund with interest at a  
5 rate ordered by the commission.

6           ~~(6)(4)~~ The utility, in requesting staff assistance,  
7 shall agree to accept the final rates and charges approved by  
8 the commission unless the final rates and charges produce less  
9 revenue than the existing rates and charges.

10           ~~(7)(5)~~ In the event of a protest or appeal by a party  
11 other than the utility, the commission may provide for  
12 temporary rates subject to refund with interest.

13           ~~(8)(6)~~ If a utility becomes exempt from commission  
14 regulation ~~or jurisdiction~~ during the pendency of a  
15 staff-assisted rate case, the request for rate relief is  
16 deemed to have been withdrawn. Temporary or interim rates, if  
17 previously approved, must be discontinued, and any money  
18 collected pursuant to the temporary or interim rates must be  
19 refunded to the customers of the utility with interest.

20           ~~(9)(7)~~ The commission may by rule establish standards  
21 and procedures whereby rates and charges of small utilities  
22 may be set using criteria other than those set forth in s.  
23 367.081(1), (2)(a), and (3).

24           Section 5. Subsections (1), (5), and (7) of section  
25 367.082, Florida Statutes, are amended to read:

26           367.082 Interim rates; procedure.--

27           (1) The commission may, during any proceeding for a  
28 change of rates, upon its own motion, upon petition from any  
29 party, or by a tariff filing of a utility or a regulated  
30 company, authorize the collection of interim rates until the  
31 effective date of the final order. Such interim rates may be

1 based upon a test period different from the test period used  
2 in the request for permanent rate relief. ~~Upon application by~~  
3 ~~a utility, the commission may use the projected test-year rate~~  
4 ~~base when determining the interim rates or revenues subject to~~  
5 ~~refund.~~To establish a prima facie entitlement for interim  
6 relief, the commission, the petitioning party, the utility, or  
7 the regulated company shall demonstrate that the utility or  
8 the regulated company is earning outside the range of  
9 reasonableness on rate of return calculated in accordance with  
10 subsection (5).

11 (5)(a) In setting interim rates or setting revenues  
12 subject to refund, the commission shall determine the revenue  
13 deficiency or excess by calculating the difference between the  
14 achieved rate of return of a utility or regulated company and  
15 its required rate of return applied to an average investment  
16 rate base or an end-of-period investment rate base. If an  
17 end-of-period investment rate base is used, end-of-period  
18 adjustments shall also be made to associated expenses,  
19 revenues, and cost of capital.

20 (b) For purposes of this subsection:

21 1. "Achieved rate of return" means the rate of return  
22 earned by the company for the most recent 12-month period.  
23 The achieved rate of return shall be calculated by applying  
24 appropriate adjustments consistent with those which were used  
25 in the most recent individual rate proceeding of the utility  
26 or regulated company and annualizing any rate changes  
27 occurring during or subsequent to such period.

28 2. "Required rate of return" shall be calculated as  
29 the weighted average cost of capital for the most recent  
30 average period or end-of-period used in accordance with  
31 paragraph (5)(a)~~12-month period~~, using the last authorized

1 rate of return on equity of the utility or regulated company,  
2 the current embedded cost of fixed-rate capital, the actual  
3 cost of short-term debt, the actual cost of variable-cost  
4 debt, and the actual cost of other sources of capital which  
5 were used in the last individual rate proceeding of the  
6 utility or regulated company.

7           3. In a proceeding for an interim increase, the term  
8 "last authorized rate of return on equity" used in  
9 subparagraph 2. means the minimum of the range of the last  
10 authorized rate of return on equity established in the most  
11 recent individual rate proceeding of the utility or regulated  
12 company. In a proceeding for an interim decrease, the term  
13 "last authorized rate of return on equity" used in  
14 subparagraph 2. means the maximum of the range of the last  
15 authorized rate of return on equity established in the most  
16 recent individual rate proceeding of the utility or regulated  
17 company. The last authorized return on equity for purposes of  
18 this subsection shall be established only: in the most recent  
19 rate case of the utility; in a limited scope proceeding for  
20 the individual utility; by voluntary stipulation of the  
21 utility approved by the commission; or pursuant to s.  
22 367.081(4)(f).

23           (7) If a utility becomes exempt from commission  
24 regulation ~~or jurisdiction~~ during the pendency of a rate case,  
25 the request for rate relief pending before the commission is  
26 deemed to have been withdrawn. Interim rates, if previously  
27 approved, must be discontinued, and any money collected  
28 pursuant to interim rate relief must be refunded to the  
29 customers of the utility with interest.

30           Section 6. Subsections (1) and (2) of section 367.145,  
31 Florida Statutes, are amended to read:

1           367.145 Regulatory assessment and application fees.--

2           (1) The commission shall set by rule a regulatory  
3 assessment fee that each utility must pay once a year in  
4 conjunction with filing its annual financial report required  
5 by commission rule. Notwithstanding any provision of law to  
6 the contrary, the amount of the regulatory assessment fee  
7 shall not exceed 4.5 percent of the gross revenues of the  
8 utility derived from intrastate business, excluding sales for  
9 resale made to a regulated company.

10           (a) A utility shall continue to be liable for  
11 regulatory assessment fees when it becomes subject to  
12 jurisdiction by a county until all cases then pending before  
13 the commission are completed. However, in no event shall a  
14 utility be responsible for regulatory assessment fees to the  
15 commission beyond 6 months from the date jurisdiction is  
16 transferred to the county, and at that point, the regulatory  
17 assessment fees shall go to the county.

18           (b)~~(a)~~ A governmental authority to which ownership or  
19 control of a utility is transferred is not liable for any fees  
20 owed the commission by the utility as of the date of transfer.  
21 However, whenever a purchase at wholesale is made of any water  
22 or wastewater service and a fee is paid or payable thereon by  
23 the selling utility and the utility purchasing such water or  
24 wastewater service resells the same directly to customers, the  
25 purchasing utility is entitled to, and must receive, credit on  
26 such fees as may be due by it under this section to the extent  
27 of the fee paid or payable upon such water or wastewater  
28 service by the utility from which such purchase was made. All  
29 such fee payments and penalties must be deposited in  
30 accordance with s. 350.113.

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1           (c)~~(b)~~ In addition to the penalties and interest  
2 otherwise provided, the commission may impose a penalty upon a  
3 utility for failure to pay regulatory assessment fees in a  
4 timely manner in accordance with s. 367.161.

5           (2) Each utility shall pay an application fee,  
6 established by the commission, for an original certificate of  
7 authorization; an amendment to an existing certificate of  
8 authorization; a request for rate relief in accordance with s.  
9 367.081, or s. 367.0814, or s. 367.0817; a proceeding pursuant  
10 to s. 367.0822; service availability charges filed in  
11 accordance with s. 367.101; and when this chapter becomes  
12 applicable to a county in accordance with s. 367.171. In a  
13 proceeding under s. 367.0814, the commission may authorize a  
14 payment plan for the application fee, which fee must be paid  
15 in full before final rates or charges are approved by the  
16 commission. The payment plan is contingent upon the final  
17 approval of the Department of Banking and Finance. For  
18 utilities under receivership, the application fee is waived.  
19 The amount of the application fee determined by the commission  
20 may not exceed \$4,500 and must be based upon the existing or  
21 proposed capacity of the system, extension, or deletion. All  
22 such fee payments must be deposited in accordance with s.  
23 350.113.

24           Section 7. Section 367.165, Florida Statutes, is  
25 amended to read:

26           367.165 Abandonment.--It is the intent of the  
27 Legislature that water or wastewater service to the customers  
28 of a utility not be interrupted by the abandonment or  
29 placement into receivership of the utility. To that end:  
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1           (1) For purposes of this section, the term "utility  
2 operator" means any person, lessee, trustee, or receiver  
3 owning, operating, managing, or controlling a utility.

4           (2)(1) The utility operator shall give 90 days'  
5 written notice of intent to abandon the utility to the county  
6 or counties in which the utility is located, the Department of  
7 Environmental Protection and its delegated local program under  
8 s. 403.182, if applicable, the water management district, and  
9 the commission.~~No person, lessee, trustee, or receiver~~  
10 ~~owning, operating, managing, or controlling a utility shall~~  
11 ~~abandon the utility without giving 60 days' notice to the~~  
12 ~~county or counties in which the utility is located and to the~~  
13 ~~commission.~~Anyone who violates the provisions of this section  
14 commits ~~subsection is guilty of a misdemeanor of the first~~  
15 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~  
16 ~~Each day of such abandonment constitutes a separate offense.~~  
17 ~~In addition, such act is a violation of this chapter, and the~~  
18 ~~commission may impose upon the utility a penalty for each such~~  
19 ~~offense of not more than \$5,000 or may amend, suspend, or~~  
20 ~~revoke its certificate of authorization; each day of such~~  
21 ~~abandonment without prior notice constitutes a separate~~  
22 ~~offense.~~

23           (3) The Legislature finds that the public interest  
24 requires a utility to have ownership of utility facilities and  
25 ownership or continued use of the land upon which the utility  
26 is located. If the land upon which the utility's facilities  
27 are located is not in the name of the utility, it is the  
28 responsibility of the operator of the abandoning utility to  
29 provide for the long-term, continued use of the land by the  
30 subsequent utility operator at reasonable terms. In accordance  
31 with the public interest, upon notice, abandonment shall

1 result in the relinquishment of any rights to utility  
2 property, real and personal.

3 ~~(4)(2)~~ After receiving such notice, the county, or  
4 counties acting jointly if more than one county is affected,  
5 shall petition the circuit court of the judicial circuit in  
6 which such utility is domiciled to appoint a receiver, which  
7 may be the governing body of a political subdivision or any  
8 other person deemed appropriate. The receiver shall operate  
9 the utility from the date of abandonment until such time as  
10 the receiver disposes of the property of the utility in a  
11 manner designed to continue the efficient and effective  
12 operation of utility service.

13 (5) Upon appointment of a receiver by the circuit  
14 court, all of the books and records of the utility operator  
15 shall be transferred to the receiver. If the utility operator  
16 has not relinquished utility property or provided for the  
17 continued use of the land in accordance with this section, the  
18 circuit court shall order such compliance.

19 ~~(6)(3)~~ The notification to the commission under  
20 subsection ~~(2)(1)~~ is sufficient cause for revocation,  
21 suspension, or amendment of the certificate of authorization  
22 of the utility as of the date of abandonment. The receiver  
23 operating such utility shall be considered to hold a temporary  
24 authorization from the commission, and the approved rates of  
25 the utility shall be deemed to be the approved interim rates  
26 of the receiver until modified by the commission.

27 Section 8. This act shall take effect July 1, 1997.  
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HOUSE SUMMARY

Amends the Water and Wastewater Treatment Regulatory Law, ch. 367, F.S., to delete the requirement for an exempt reseller to file certain annual reports with the Public Service Commission; to delete the requirement for such reseller to have meters tested; to authorize the commission to treat as a matter of right the transfer of a utility to certain exempt nonprofit entities; to provide a procedure for the handling of a decrease in the expenses of a utility when the utility's rates have been adjusted to pass through an increase in the expenses; to allow interim rates in commission staff-assisted rate cases and provide requirements therefor; to provide procedures for adopting interim rates; to provide for regulatory assessment fees when jurisdiction is transferred from the commission to a county; to authorize a payment plan for certain application fees, which plan must be approved by the Department of Banking and Finance; to require an application fee for a request for rate relief for a reuse project; and to provide additional requirements relating to notice of abandonment and relinquishment of property and records, to ensure that utility service is not interrupted when a utility is abandoned or goes into receivership, which requirements are subject to an existing penalty.