

By the Committee on Regulated Industries

315-340C-98

1 A bill to be entitled
 2 An act relating to water and wastewater utility
 3 systems; amending s. 367.045, F.S.; revising
 4 provisions relating to the issuance of or
 5 amendment to certificates of authorization;
 6 amending s. 367.071, F.S.; providing a
 7 procedure for determination of rate base when
 8 one utility is acquired by another; amending s.
 9 367.081, F.S.; providing for consideration of
 10 the economic impact on customers in setting
 11 rates; revising the procedure for the automatic
 12 increase or decrease of rates; deleting the
 13 reasonableness standard for rate case expenses;
 14 authorizing a customer or the public counsel to
 15 petition the Public Service Commission for a
 16 proposed agency action proceeding; amending s.
 17 367.0816, F.S.; providing for proportionate
 18 recovery of rate case expenses; providing a
 19 reasonableness standard in recovery of rate
 20 case expenses; providing an effective date.

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 22 Be It Enacted by the Legislature of the State of Florida:
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24 Section 1. Subsections (1), (2), (4), and (5) of
 25 section 367.045, Florida Statutes, are amended to read:

26 367.045 Certificate of authorization; application and
 27 amendment procedures.--

28 (1) When a utility applies for an initial certificate
 29 of authorization from the commission, it shall:

30 (a) Provide notice of the actual application filed by
 31 mail or personal delivery to the governing body of the county

1 or city affected, to the Public Counsel, to the commission,
2 and to such other persons and in such other manner as may be
3 prescribed by commission rule;

4 (b) Provide all information required by rule or order
5 of the commission, which information shall ~~may~~ include, at a
6 minimum, a detailed inquiry into the ability of the applicant
7 to provide service, the area and facilities involved, the need
8 for service and the time within which service will be needed
9 in the area involved, and the existence or nonexistence of
10 service from other sources within geographical proximity to
11 the area in which the applicant seeks to provide service;

12 (c) File with the commission schedules showing all
13 rates, classifications, and charges for service of every kind
14 proposed by it and all rules, regulations, and contracts
15 relating thereto;

16 (d) File the application fee required by s. 367.145;
17 and

18 (e) Submit an affidavit that the applicant has
19 provided notice of its actual application pursuant to this
20 section.

21 (2) A utility may not delete or extend its service
22 outside the area described in its certificate of authorization
23 until it has obtained an amended certificate of authorization
24 from the commission. When a utility applies for an amended
25 certificate of authorization from the commission, it shall:

26 (a) Provide notice of the actual application filed by
27 mail or personal delivery to the governing body of the county
28 or municipality affected, to the Public Counsel, to the
29 commission, and to such other persons and in such other manner
30 as may be prescribed by commission rule;

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1 (b) Provide all information required by rule or order
2 of the commission, which information shall ~~may~~ include, at a
3 minimum, a detailed inquiry into the ability or inability of
4 the applicant to provide service, the need ~~or lack of need~~ for
5 service and the time within which service will be needed in
6 the area that the applicant seeks to ~~delete~~ or add or the lack
7 of need for service in the area the applicant seeks to delete;
8 the existence or nonexistence of service from other sources
9 within geographical proximity to the area that the applicant
10 seeks to delete or add, and a description of the area sought
11 to be deleted or added to the area described in the
12 applicant's current certificate of authorization;

13 (c) Provide a reference to the number of the most
14 recent order of the commission establishing or amending the
15 applicant's rates and charges;

16 (d) Submit an affidavit that the utility has tariffs
17 and annual reports on file with the commission;

18 (e) File the application fee required by s. 367.145;
19 and

20 (f) Submit an affidavit that the applicant has
21 provided notice of its actual application pursuant to this
22 section.

23 (4) If, within 30 days after the last day that notice
24 was mailed or published by the applicant, whichever is later,
25 the commission receives from the Public Counsel, a
26 governmental authority, or a utility or consumer who would be
27 substantially affected by the requested certification or
28 amendment a written objection requesting a proceeding pursuant
29 to ss. 120.569 and 120.57, the commission shall order such
30 proceeding conducted in or near the area for which application
31 is made, if feasible. Notwithstanding the ability to object

1 on any other ground, a county or municipality has standing to
2 object on the ground that the issuance or amendment of the
3 certificate of authorization violates or is inconsistent with
4 established local comprehensive plans developed pursuant to
5 ss. 163.3161-163.3211. If a consumer, utility, or
6 governmental authority or the Public Counsel requests a public
7 hearing on the application, such hearing must, if feasible, be
8 held in or near the area for which application is made; and
9 the transcript of such hearing and any material submitted at
10 or before the hearing must be considered as part of the record
11 of the application and any proceeding related thereto.

12 (5)(a) The commission may grant or amend a certificate
13 of authorization, in whole or in part or with modifications in
14 the public interest, but may not grant authority greater than
15 that requested in the application or amendment thereto and
16 noticed under this section or authorize a service area larger
17 than the area to be served within a reasonable period of time;
18 or it may deny a certificate of authorization or an amendment
19 to a certificate of authorization, if in the public interest.
20 The commission may deny an application for a certificate of
21 authorization for any new Class C wastewater system, as
22 defined by commission rule, if the public can be adequately
23 served by modifying or extending a current wastewater system.
24 The commission may not grant a certificate of authorization
25 for a proposed system, or an amendment to a certificate of
26 authorization for the extension of an existing system, which
27 will be in competition with, or a duplication of, any other
28 system or portion of a system, unless it first determines that
29 such other system or portion thereof is inadequate to meet the
30 reasonable needs of the public or that the person operating
31

1 the system is unable, refuses, or neglects to provide
2 reasonably adequate service.

3 (b) When granting or amending a certificate of
4 authorization, the commission need not consider whether the
5 issuance or amendment of the certificate of authorization is
6 inconsistent with the local comprehensive plan of a county or
7 municipality unless a timely objection to the notice required
8 by this section has been made by an appropriate motion or
9 application. If such an objection has been timely made, the
10 commission shall determine whether the issuance or amendment
11 of the certificate of authorization is consistent with
12 ~~consider, but is not bound by,~~ the local comprehensive plan of
13 the county or municipality which is developed pursuant to ss.
14 163.3131-163.3211.

15 Section 2. Subsection (5) of section 367.071, Florida
16 Statutes, is amended to read:

17 367.071 Sale, assignment, or transfer of certificate
18 of authorization, facilities, or control.--

19 (5)(a) The commission by order may establish the rate
20 base for a utility or its facilities or property when the
21 commission approves a sale, assignment, or transfer thereof,
22 except for any sale, assignment, or transfer to a governmental
23 authority.

24 (b) Unless an acquiring utility demonstrates by clear
25 and convincing evidence that a higher rate base is in the best
26 interest of the ratepayers of the utility acquired, when the
27 acquisition price is equal to or greater than the acquired
28 utility's rate base, the rate base for ratemaking purposes
29 shall be set at the acquired utility's rate base. When the
30 acquisition price is less than the acquired utility's rate
31 base, the rate base for ratemaking purposes shall be set at

1 the acquisition price. The term "acquisition price" as used in
2 this paragraph means the amount paid to or for the benefit of
3 the utility acquired. Acquisition expenses in excess of the
4 acquisition price must be capitalized. When the acquisition
5 price is less than the acquired utility's rate base no
6 acquisition expenses may be recovered in the rate base or its
7 income statement except as provided in this paragraph.

8 (c) This section applies prospectively only and does
9 not apply to applications for the approval of a proposed sale,
10 assignment, or transfer previously approved or pending under
11 this section on July 1, 1998.

12 Section 3. Paragraph (a) of subsection (2), paragraphs
13 (a), (b), and (c) of subsection (4), and subsections (7) and
14 (8) of section 367.081, Florida Statutes, are amended to read:

15 367.081 Rates; procedure for fixing and changing.--

16 (2)(a) The commission shall, either upon request or
17 upon its own motion, fix rates which are just, reasonable,
18 compensatory, and not unfairly discriminatory. In every such
19 proceeding, the commission shall consider the value and
20 quality of the service and the cost of providing the service,
21 which shall include, but not be limited to, economic impact
22 upon a utility's customers;debt interest; the requirements of
23 the utility for working capital; maintenance, depreciation,
24 tax, and operating expenses incurred in the operation of all
25 property used and useful in the public service; and a fair
26 return on the investment of the utility in property used and
27 useful in the public service. However, the commission shall
28 not allow the inclusion of
29 contributions-in-aid-of-construction in the rate base of any
30 utility during a rate proceeding; and accumulated depreciation
31 on such contributions-in-aid-of-construction shall not be used

1 to reduce the rate base, nor shall depreciation on such
2 contributed assets be considered a cost of providing utility
3 service. The commission shall also consider the investment of
4 the utility in land acquired or facilities constructed or to
5 be constructed in the public interest within a reasonable time
6 in the future, not to exceed, unless extended by the
7 commission, 24 months from the end of the historical test
8 period used to set final rates.

9 (4)(a) On or before March 31 of each year, the
10 commission by order shall establish a price increase or
11 decrease index for major categories of operating costs
12 incurred by utilities subject to its jurisdiction reflecting
13 the percentage of increase or decrease in such costs from the
14 most recent 12-month historical data available. The commission
15 by rule shall establish the procedure to be used in
16 determining such indices and a procedure by which a utility,
17 without further action by the commission, or the commission on
18 its own motion, may implement an increase or decrease in its
19 rates based upon the application of the indices to the amount
20 of the major categories of operating costs incurred by the
21 utility during the immediately preceding calendar year, except
22 to the extent of any disallowances or adjustments for those
23 expenses of that utility in its most recent rate proceeding
24 before the commission. The rules shall provide that, upon a
25 finding of good cause, including inadequate service, the
26 commission may order a utility to refrain from implementing a
27 rate increase hereunder unless implemented under a bond or
28 corporate undertaking in the same manner as interim rates may
29 be implemented under s. 367.082. A utility may not use this
30 procedure between the official filing date of the rate
31 proceeding and 1 year thereafter, unless the case is completed

1 or terminated at an earlier date. A utility may not use this
2 procedure to increase any operating cost for which an
3 adjustment has been or could be made under paragraph (b), or
4 to increase its rates by application of a price index other
5 than the most recent price index authorized by the commission
6 at the time of filing. Before implementing a change in rates
7 under this paragraph, the utility shall file an affirmation
8 under oath as to the accuracy of the figures and calculations
9 upon which the change in rates is based, stating that the
10 change will not cause the utility to exceed the range of its
11 last authorized rate of return on equity. Whoever knowingly
12 makes a false statement in the affirmation in regard to any
13 material matter, is guilty of a felony of the third degree,
14 punishable as provided in s. 775.082, s. 775.083, or s.
15 775.084.

16 (b) The approved rates of any utility ~~that~~ which
17 receives all or any portion of its utility service from a
18 governmental authority or from a water or wastewater utility
19 regulated by the commission and ~~that~~ which redistributes that
20 service to its utility customers may be increased by the
21 utility or, in the instance of a decrease, shall be
22 automatically ~~increased or decreased~~ by the utility without
23 hearing not more than 60 days after the rates charged by the
24 governmental authority or other utility change. The utility
25 shall file a, ~~upon~~ verified notice to the commission 45 days
26 prior to its implementation of the increase or decrease ~~that~~
27 the rates charged by the governmental authority or other
28 utility have changed. The approved rates of any utility ~~that~~
29 which is subject to an increase or decrease in the rates or
30 fees that it is charged for electric power, the amount of ad
31 valorem taxes assessed against its used and useful property,

1 the fees charged by the Department of Environmental Protection
2 in connection with the National Pollutant Discharge
3 Elimination System Program, or the regulatory assessment fees
4 imposed upon it by the commission may be increased by the
5 utility or, in the instance of a decrease, shall be
6 automatically increased ~~or decreased~~ by the utility, without
7 hearing not more than 60 days after the rates charged by the
8 supplier of the electric power or the taxes imposed by the
9 governmental authority or the regulatory assessment fees
10 imposed upon it by the commission change. The utility shall
11 file a action by the commission, upon verified notice to the
12 commission 45 days prior to its implementation of the increase
13 or decrease ~~that the rates charged by the supplier of the~~
14 ~~electric power or the taxes imposed by the governmental~~
15 ~~authority, or the regulatory assessment fees imposed upon it~~
16 ~~by the commission have changed.~~ The new rates authorized shall
17 reflect the amount of the change of the ad valorem taxes or
18 rates imposed upon the utility by the governmental authority,
19 other utility, or supplier of electric power, or the
20 regulatory assessment fees imposed upon it by the commission.
21 The approved rates of any utility shall be automatically
22 increased, without hearing, upon verified notice to the
23 commission 45 days prior to implementation of the increase
24 that costs have been incurred for water quality or wastewater
25 quality testing required by the Department of Environmental
26 Protection. The new rates authorized shall reflect, on an
27 amortized basis, the cost of, or the amount of change in the
28 cost of, required water quality or wastewater quality testing
29 performed by laboratories approved by the Department of
30 Environmental Protection for that purpose. The new rates,
31 however, shall not reflect the costs of any required water

1 quality or wastewater quality testing already included in a
2 utility's rates. A utility may not use this procedure to
3 increase its rates as a result of water quality or wastewater
4 quality testing or an increase in the cost of purchased water
5 services, sewer services, or electric power or in assessed ad
6 valorem taxes, which increase was initiated more than 12
7 months before the filing by the utility. The provisions of
8 this subsection do not prevent a utility from seeking a change
9 in rates pursuant to the provisions of subsection (2).

10 ~~(c) Before implementing a change in rates under this~~
11 ~~subsection, the utility shall file an affirmation under oath~~
12 ~~as to the accuracy of the figures and calculations upon which~~
13 ~~the change in rates is based, stating that the change will not~~
14 ~~cause the utility to exceed the range of its last authorized~~
15 ~~rate of return on equity. Whoever makes a false statement in~~
16 ~~the affirmation required hereunder, which statement he or she~~
17 ~~does not believe to be true in regard to any material matter,~~
18 ~~is guilty of a felony of the third degree, punishable as~~
19 ~~provided in s. 775.082, s. 775.083, or s. 775.084.~~

20 (7) Upon request by a utility, a utility customer, or
21 the public counsel, the commission shall determine whether ~~The~~
22 ~~commission shall determine the reasonableness of rate case~~
23 ~~expenses and shall disallow all rate case expenses determined~~
24 ~~to be unreasonable. No rate case expense determined to be~~
25 ~~unreasonable shall be paid by a consumer. In determining the~~
26 ~~reasonable level of rate case expense the commission shall~~
27 ~~consider the extent to which a utility has utilized or failed~~
28 ~~to utilize the provisions of paragraph (4)(a) or paragraph~~
29 ~~(4)(b) and such other criteria as it may establish by rule.~~

30 ~~(8) A utility may specifically request the commission~~
31 ~~to process the utility's ~~its~~ petition for rate relief using~~

1 the agency's proposed agency action procedure, as prescribed
2 by commission rule. The commission shall enter its vote on
3 the proposed agency action within 5 months of the official
4 filing date. If the commission's proposed action is
5 protested, the final decision shall be rendered by the
6 commission within 8 months of the date the protest is filed.
7 At the expiration of 5 months following the official filing
8 date, if the commission has not taken action or, if the
9 commission's action is protested by a party other than the
10 utility, the utility may place its requested rates into effect
11 under bond, escrow, or corporate undertaking subject to
12 refund, upon notice to the commission and upon filing the
13 appropriate tariffs. The utility shall keep accurate records
14 of amounts received as provided by subsection (6).

15 Section 4. Section 367.0816, Florida Statutes, is
16 amended to read:

17 367.0816 Recovery of rate case expenses.--

18 (1) In any case in which an increase in rates has been
19 requested by a public utility pursuant to this chapter and
20 that increase is challenged, and the rate increase is denied,
21 the rate case expenses, including all costs and attorney's
22 fees, in the case shall be paid by the public utility. In the
23 event that a rate increase is granted but in an amount less
24 than requested, the rate case expenses, including costs and
25 attorney's fees, shall be apportioned in such a way that the
26 public utility shall pay a proportion of the rate expenses
27 which is equal to the percentage difference between the rate
28 increase requested and the rate increase approved.

29 (2) The commission shall determine the reasonableness
30 of rate case expenses and shall disallow all rate case
31 expenses determined to be unreasonable. In determining the

1 reasonable level of rate case expense the commission shall
2 consider the extent to which a utility has utilized or failed
3 to utilize the provisions of s. 367.081(4)(a) or (b) and such
4 other criteria as it may establish by rule.

5 (3) The amount of rate case expense determined by the
6 commission pursuant to the provisions of this chapter to be
7 recovered through the a public utility's ~~utilities~~ rate shall
8 be apportioned for recovery over a period of 4 years. At the
9 conclusion of the recovery period, the rate of the public
10 utility shall be reduced immediately by the amount of rate
11 case expense previously included in rates.

12 Section 5. This act shall take effect July 1, 1998.

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15 SENATE SUMMARY

16 Revises requirements for the issuance of or amendment to
17 certificates of authorization to operate a water and
18 wastewater utility. Provides a procedure for
19 determination of rate base when one utility is acquired
20 by another. Requires the Public Service Commission to set
21 rates for water and wastewater utility systems which
22 consider the economic impact on customers of the utility
23 systems. Revises the procedure for implementing rate
24 changes. Authorizes a utility, a utility customer, or the
25 Public Counsel to request the commission to process a
26 petition for rate relief. Provides a standard of
27 reasonableness for rate case expenses. Provides for
28 proportionate recovery of rate case expenses.
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