

STORAGE NAME: h0925z.uco
DATE: July 20, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
UTILITIES AND COMMUNICATIONS
FINAL ANALYSIS**

BILL #: HB 925
RELATING TO: Public Service Commission
SPONSOR(S): Representative Arnall and others
COMPANION BILL(S): SB 1352(I)

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

- (1) UTILITIES AND COMMUNICATIONS YEAS 9 NAYS 1
- (2) WATER & RESOURCE MANAGEMENT (W/D)
- (3) TRANSPORTATION AND ECONOMIC DEVELOPMENT APPROPRIATIONS (W/D)
- (4)
- (5)

I. FINAL ACTION STATUS:

The bill died on House calendar April 30, 1999. CS S/B 1392 was approved by the Governor on June 11, 1999 (Chapter 99-319, Laws of Florida).

II. SUMMARY:

This bill prohibits the Public Service Commission (PSC) from imputing (deducting) prospective future contributions-in-aid-construction, on used and useful utility investments. It authorizes the PSC, during a rate proceeding to consider, certain property as used and useful in the public service for a period not to exceed 24 months under enumerated conditions. This bill provides a 5% per year growth rate cap for equivalent residential connections.

The bill provides that the PSC shall approve rates that allow a utility to recover the full amount of environmental compliance costs.

The bill defines the term "environmental compliance costs."

The bill expands the definition of "governmental authority" to include non-profit corporations formed to act on behalf of a political subdivision.

The bill expands the list of PSC regulation exemptions and deletes reseller regulatory language.

The bill allows for certain transactions to be contingent upon PSC approval.

The bill allows for a 4-year apportioned recovery for rate case expenses without the reduction of rates after the recovery period. It authorizes the PSC interim rate relief options in staff-assisted rate cases and clarifies PSC jurisdiction in certain rate case proceedings.

The bill requires notice of rate case application and grants leave to intervene under certain circumstances.

The bill provides in sections 2 and 9, that provisions of this act do not apply to rate cases pending before the PSC on March 11, 1999.

The bill takes effect upon becoming law.

The bill does not appear to have a fiscal impact on state or local governments.

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III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 367.011, Florida Statutes, grants the Public Service Commission (PSC) with the exclusive jurisdiction over each privately owned water and wastewater utility with respect to its authority, service, and rates subject to other provisions of chapter 367, F.S.

Moreover, s. 367.011, F.S., grants that a county may, through a resolution adopted by a board of county commissioners, or a declaration by the appropriate board of a charter county, opt to cede regulatory authority over privately owned water and wastewater utilities to the PSC. A county may elect to regulate water and wastewater utilities within its county. If a private utility's service "traverses county boundaries," it is subject to PSC jurisdiction. Currently, the PSC has jurisdiction over 37 counties which comprises approximately 196 water companies and 155 wastewater companies.

Rate setting procedures, for utilities under PSC jurisdiction, are set forth in s. 367.081, F.S., providing that a utility may only charge rates and charges that have been approved by the PSC, except as provided in ss. 367.081(4) and 367.081(6), F.S.

Section 367.081(2)(a), F.S., reads in part:

The commission shall, either upon request or upon its own motion, fix rates which are just, reasonable, compensatory, and not unfairly discriminatory. In every such proceeding, the commission shall consider the value and quality of the service and the cost of providing the service, which shall include, but not be 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. . .

These variables, when computed, equate to the figure the PSC uses to determine a rate base, and upon which the utility is allowed to earn a rate of return. Within this computation is an element known as margin reserve. Margin reserve is defined in the PSC's Proposed Rule 25-30.431, Florida Administrative Code, as:

the amount of plant capacity needed to preserve and protect the ability of utility facilities to serve existing and future customers in an economically feasible manner that will preclude a deterioration in quality of service and prevent adverse environmental and health effects.

Further the commission's proposed rule states:

the margin reserve period for water source and treatment facilities and wastewater treatment and effluent disposal facilities will be 18 months. In determining whether another margin reserve period is justified, the Commission shall consider the rate of growth in the number of equivalent residential connections (ERCs); the time needed to meet the guidelines of the Department of Environmental Protection (DEP) for planning, designing, and construction of plant expansion; and the technical and economic options available for sizing increments of plant expansion.

A formal administrative hearing was conducted in December 1997, which challenged the PSC's Proposed Rule 25-30.431, F. A.C., which provides the establishment of the margin reserve. The case is styled Florida Waterworks Association, vs. Florida Public Service Commission, Florida Water Services Corporation vs. Florida Public Service Commission, (Consolidated) Case Nos. 97-3480RP and 97-3481RP. On March 2, 1998, the PSC's rule was determined to be an invalid exercise of delegated legislative authority and was not to be utilized by the PSC for its stated regulatory purposes. The PSC and Public Counsel appealed the decision.

On May, 10, 1999, the 1st District Court of Appeal reversed DOAH's decision. Florida Public Service Commission v. Florida Waterworks Association, 731 So.2d 836 (Fla. 1st DCA 1999). The PSC has not voted to adopt the rule, because changes to it are required to reflect new legislation.

Factors that further serve in the computation to establish a rate base are the variables which are deducted from the utility plant in service. These are also outlined in s. 367.081(2)(a), F.S., which reads in part:

However, the commission shall not allow the inclusion of contributions-in-aid-of-construction in the rate base of any utility during a rate proceeding; and accumulated depreciation on such contributions-in-aid-of-construction shall not be used to reduce the rate base, nor shall depreciation on such contributed assets be considered a cost of providing utility service. The commission shall also consider the investment of the utility in land acquired or facilities constructed or to be constructed in the public interest within a reasonable time in the future, not to exceed, unless extended by the commission, 24 months from the end of the historical test period used to set final rates.

Section 367.021(3), F.S., provides the definition of contributions-in-aid-of-construction as:

any amount or item of money, services, or property received by a utility, from any person or governmental authority, any portion of which is provided at no cost to the utility, which represents a donation or contribution to the capital of the utility, and which is used to offset the acquisition, improvement, or construction costs of the utility property, facilities, or equipment used to provide utility services.

The most common examples of these assets are cash contributions such as fees paid by customers for connection or hookup to a system, or property contributions such as developer-donated water and sewer lines.

In June 1997, the commission voted to change its policy of imputing (deducting) 100% of contributions-in-aid-of-construction on the margin reserve to imputing 50% on the margin reserve. In other words, the PSC would prospectively deduct 50% of the dollar amount in aid contributed to a utility and remove that 50% from the amount upon which a utility is allowed to earn a return.

Among the precursors of a utility's presentation of this information to the PSC for a rate determination is permitting by a water management district and the Department of Environmental Protection, (DEP). In this process water and wastewater facilities are addressed separately. This procedure is prefaced on a need being established for a facility.

A public water supply facility first track for permitting or licensing is through the applicable water management district. A facility must obtain both a consumptive use permit and a well construction permit. Section 120.60, F.S., outlines the 90-day time frame which DEP has to approve or deny an application.

Before a rate case can be filed with the PSC, a utility must apply to the applicable water management district and the Florida Department of Environmental Protection (DEP) for a operating permit.

Provided an application is complete, a notice of Proposed Agency Action is issued by the staff and by the governing board of the water management district. It is within the board's discretion to modify or change staff's recommendation prior to issuing its final approval. Depending upon the utility's use, location, and environmental impact, a permit term ranges from 5 to 20 years.

An applicant then proceeds to obtain from DEP construction permitting for the public water system's above ground facilities.

The information necessary for permitting a public water facility includes the collection, treatment, storage, and distribution of the public water system. Subsequent construction or alteration of any segment of the system requires additional permitting.

DEP's Rule 62-555-520, F.A.C., provides that:

(3) A person applying for a permit to construct or alter a public drinking water system should take note of Chapter 471, F.S., which requires that the planning and design of any project involving the public health or safety must be done by a professional engineer licensed in accordance with the Chapter. Further, Chapter 471, F.S., requires that subsequently permitted construction or alteration of public drinking water systems be supervised during construction by a professional engineer. . .

Upon application approval, a letter of clearance is issued and the term of the permit is indefinite, absent violations.

The industry estimates the time for planning, designing, permitting, constructing, and testing/certifying phases of a public water facility is 2.75 - 7.5 years.

An applicant for a wastewater permit applies only to DEP for a new or substantially modified domestic or industrial wastewater facility. Domestic wastewater means wastewater derived principally from dwellings, business buildings, institutions, and the like commonly referred to as sanitary wastewater or sewage. Industrial wastewater means process and non-process wastewater from manufacturing, commercial, mining and silvicultural (processed rocks and logs) facilities or activities, including the runoff and leachate from areas that receive pollutants associated with industrial or commercial storage, handling or processing, and all other wastewater not otherwise defined as domestic wastewater.

Rule 62-620.410(3), F.A.C., General Application Requirements, governs the required documents which describe the proposed facility or modification. It states:

An applicant shall submit as part of application for a wastewater permit a preliminary design or engineering report and other information in accordance with the Department of Environmental Protection Guide to Wastewater Permitting. A report substantively addressing all of the elements listed in the Guide shall be submitted at least 90 days before construction commences on a facility or activity which discharges solely to surface waters or on a component of a facility or activity which discharges solely to surface waters if the applicant can demonstrate that the component is separable from the entire facility or activity. For all other facilities or activities, the report shall be submitted and made complete with the application for permit.

An applicant for a wastewater permit for an industrial wastewater facility or activity is required to provide an engineering report containing a description of the plant and plant operations, the types and quantities of all waste material, waste control facilities, treatment objectives, design criteria for control facilities, all discharge points, or outfall discharging to ground or surface water.

Applicants for a wastewater permit for a domestic wastewater facility are required to provide a preliminary design report containing information on the current and design year projections for the service area population, the description and map of service area and land use, the forecasts of flow and wastewater characteristics, site plan showing operations and unit processes, flood elevations, an assessment of environmental effects of project, disposal methods or reuse options, technical information and design criteria for the treatment facilities.

According to DEP, an engineering report should typically describe a facility with a 20 year life expectancy.

Rule 62-620.320, F.A.C., addresses the standards for issuing or denying permits. Rule 62-620.320(8) F.A.C., provides that DEP can issue a permit for five years or less.

With the issuance of a construction/operational permit, construction begins within 90 days. Throughout the construction phase, status checks of the facility are performed until the facility is completed and ready to go on line.

Rule 17-600.405, F.A.C., requires a permittee to routinely compare flows being treated at a wastewater facility with the permitted capacities of the treatment, residuals, reuse, and disposal facilities. When the three-month average daily flow exceeds 50% of the permitted capacity of the treatment plant or reuse and disposal systems, the permittee is required to submit an initial capacity analysis report to DEP's appropriate district office. Based on the results of this initial report, the permittee will be required to submit updated capacity analysis reports to the DEP and, possibly, initiate planning, design, and construction of new facilities.

The state permitting requirements for wastewater facilities also incorporate federal permitting requirements.

The industry estimates the time for planning, designing, permitting, constructing, and certifying phases of a wastewater facility is 2.75 - 10 years.

Section 367.031, F.S., requires each utility subject to jurisdiction of the PSC to obtain a certificate of authorization to provide water or wastewater services. A utility must obtain a certificate before it can be issued a permit by the DEP.

GOVERNMENTAL AUTHORITIES

Currently governmental authorities are defined by 367.021, F.S., as a political subdivision, as defined by 1.01(8), or a regional water supply authority created pursuant to 373.1962, F.S.

EXEMPTIONS

Section 367.022, F.S., provides exemptions to regulation by the PSC as a utility or subject to the provisions of chapter 367, F.S. The following are exempt:

- the sale distribution or furnishing of bottled water.
- utility systems controlled by governmental authorities, including wastewater facilities operated by private firms under wastewater facility privatization contracts as defined in s. 153.91.
- manufacturers providing service solely in connection with their operations.
- public lodging establishments providing services to their guests.
- landlords providing service to their tenants without compensation.
- systems with capacity to serve less than 100 persons.
- nonprofit corporations, associations, or cooperatives providing service solely to their members who own them.
- any person who resells water or wastewater at a rate that does not exceed the actual purchase price. A reseller must file the rates, the source and actual purchase price of the water services annually with the commission. Resellers are also specifically subject to the equipment testing requirements of s. 367.122, F.S. An example of a water or wastewater reseller is an apartment complex.

- wastewater treatment plants operated exclusively for disposing of industrial wastewater.
- the bulk sale of desalinated water to a governmental authority.
- any person providing nonpotable water for irrigation.
- the bulk sale or resale of water to a governmental authority or utility. This exemption does not include bulk sale or resale of wastewater services.

Utility systems controlled by governmental authorities, including privately operated wastewater facilities, operating under facility privatization contracts, are exempt from PSC regulations, but pursuant to s. 367.022, F.S., parallel water facilities are not exempt.

Chapter 96-407, Laws of Florida, amended s. 367.031, F.S., to no longer require a utility to obtain a PSC order to demonstrate that a utility was exempt from PSC regulation pursuant to s. 367.022, F.S.

Among the entities not subject to PSC regulation, as a utility as provided in s. 367.022, F.S., are resellers.

Even though resellers are exempt from PSC regulations, s. 367.022(8), F.S., continues to require a level of review and analysis of them by the PSC. First, the reseller is required to submit an annual report to the PSC. The filing is unnecessary because the PSC lacks regulatory authority to take any action against an exempt reseller.

Secondly, s. 367.122, F.S., provides that the PSC, upon the request of a customer, perform examination and testing of all meters used for measuring any product or service of a utility, which includes resellers, pursuant to s. 367.022(8), F.S.

According to the PSC, review of a reseller's annual report and meter testing are two statutory provisions that the agency lacks any mechanism to offset their cost of regulation. Additionally in the case of meter testing, the PSC lacks an effective method of accomplishing that task, because resellers, like apartments, do not require meters.

The statute provides for the sale for resale of bulk supplies of water to a governmental authority or regulated utility to be exempt from regulation, but not for parallel wastewater.

SALE, ASSIGNMENT, OR TRANSFER OF CERTIFICATE OF AUTHORIZATION, FACILITIES, OR CONTROL

Section 367.071, F.S., requires a utility that wants to sell, assign, or transfer a certificate of authorization, facilities, or organizational control must receive PSC determination and approval that the transaction is in the public interest. The buyer, assignee, or transferee must also fulfill the utility's responsibilities.

According to the PSC, historically, transactions have been consummated prior to its approval, but they have always been contingent. Only on very few occasions has the PSC had to disapprove such transactions.

RECOVERY OF RATE CASE EXPENSE

A utility can recover or offset certain environmental compliance costs in a rate case by proving that the costs were reasonable and prudent investments. Section 367.081(4), F.S., allows a utility to pass through to customers rate adjustments reflecting certain expenses over which the utility has no control, such as purchased water or sewage treatment, purchased power from electricity suppliers, ad valorem tax increases, regulatory fee increases, water quality testing requirements mandated by the Department of Environmental Regulation (DER) and the federal Environmental Protection Agency (EPA). Unlike municipal water and wastewater utilities, privately-owned and operated utilities cannot receive federal monies or tax exempt financing to assist them in complying with environmental requirements.

Currently, the PSC is not bound by the decisions and orders of an environmental regulatory agency upon a utility. The PSC will consider and allow a utility to recover these environmental compliance costs by passing them on to customers unless underlying compliance action taken by the utility to meet the environmental requirement was not specifically mandated by DER. According to the PSC, requests by utilities for recovery of reasonably and prudently incurred environmental compliance costs required by DER or other environmental regulatory agencies are rarely denied by the PSC.

Section 367.0816, F.S., provides that the amount of rate case expense allowed by the PSC should be apportioned over a four year period. At the conclusion of the recovery period, the utility is required to reduce its rates by the amount of rate case expense included in the rates.

Water and wastewater are increasing cost industries with expanding state and federal regulatory requirements. Moreover, the PSC may actually reduce a utility's return on equity if a utility fails to meet environmental regulatory and statutory standards as prescribed by regulatory agencies. See s. 367.111(2), F.S.

RATE CASES

In the area of rate cases, there are three classes of water and wastewater utilities: Class A (defined as those having annual water or wastewater operating revenues of \$1,000,000 or more; Class B (defined as those having annual water or wastewater operating revenues of \$200,000 or more, but less than \$1,000,000); Class C (defined as those having annual water or wastewater revenues of less than \$200,000). See Rule 25-30.115, F.A.C.

Section 367.081, F.S., outlines a rate case proceeding. In such a proceeding, the PSC considers factors which affect a utility's revenue requirement. These factors include, but are not limited to, the value and quality of the service and the cost of providing the service. The PSC considers investments, including land and facilities constructed, depreciation costs, contributions-in-aid-of-construction, and other components to allow a utility to earn a fair rate of return on its rate base.

The documentation and records required to demonstrate the legitimacy of a utility's request for a rate increase are extensive. Class A and B utilities have resources and staff which accumulates and develops their records for presentation to the PSC to justify the requested rate increase.

This section requires the final order of the PSC to be rendered within eight months of the official filing date by the utility.

Pending the PSC final order, the PSC may authorize upon its own motion or within 60 days of a utility filing a request for interim rate relief, the collection of interim rates until the effective date of its final order. See s. 367.082, F.S. These interim rates are sufficient to earn the minimum of the range of rate of return, and the difference between the interim rates and the last authorized commission rates are collected under bond, escrow, letter of credit, or corporate undertaking, subject to refund with interest at a rate ordered by the PSC.

STAFF ASSISTED RATE CASES

Section 367.0814, F.S., provides for staff assisted rate cases. This is a proceeding which requires PSC staff to compile all the documentation and records for Class C utilities. Section 367.0814(1), F.S. provides:

The commission may establish rules by which 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.

This section requires that the final order of the commission to be rendered within 15 months.

The PSC does not have the statutory authority to grant interim rate relief for a utility in a staff assisted rate case.

According to the PSC, Class C utilities in staff assisted rate cases have received emergency rates, in some cases, where system maintenance is in jeopardy. These emergency rate decisions are rendered because of the PSC's police authority to protect the public health, safety, and welfare.

In other cases, these utilities have had to incur, as do Class A and B utilities, the expenses of a s. 367.081, F.S., rate case, and the utility customers have incurred these additional expenses because no other interim relief option exists for small utilities.

JURISDICTIONAL

Counties may regulate water and wastewater utilities under s. 367.171, F.S. Counties that have "opted out" of PSC jurisdiction for investor-owned utilities are referred to as "non-jurisdictional counties." The PSC does, however, retain jurisdiction of a non-jurisdictional utility if it traverses county boundaries. Non-jurisdictional counties may opt back into PSC jurisdiction through board of county commissioners' resolutions or declarations.

Pursuant to ss. 367.082 and 367.0814, F.S., any change in regulation (utility transferred to an exempt entity) or jurisdiction (county option regulation), during the pendency of a case before the PSC is deemed to be withdrawn and interim or temporary rates are refunded.

However, s. 367.171(5), F.S., provides:

When a utility becomes subject to regulation by a county, all cases in which the utility is a party then pending before the commission, or in any court by appeal from any order of the commission, **shall remain within the jurisdiction of the commission** or court until disposed of in accordance with the law in effect on the day such case was filed by any party with the commission or initiated by the commission, whether or not the parties or the subject of any such case relates to a utility in a county wherein this chapter no longer applies. (emphasis supplied.)

An inconsistency exists in sections 367.0814, 367.082, and 367.171(5), F.S. Despite this, the PSC does complete pending cases if there is change in jurisdiction but not if there is a change in regulation, as in a utility being transferred to an exempt entity or as in a county assumes jurisdiction.

NOTICE TO COUNTY GOVERNING BODY OF APPLICATION FOR RATE CHANGE

Rule 25-30.030, F.A.C., requires that when a utility applies for a certificate of authorization, an extension or deletion of its service area, or a sale, assignment, or transfer of its certificate of authorization, facilities, or any portion thereof, or a majority organizational control, it shall provide notice of its application in the manner and to the entities described in the rule.

Within 7 days of a utility filling its application, the utility provides a copy of the notice by regular mail to: the governing body of the county in which the utility system or the territory proposed to be served is located; the governing body of any municipality contained on the list obtained from the PSC; the regional planning council designated by the Clean Water Act, all water and wastewater utilities contained on the list(s) obtained from the PSC; the office of Public Counsel; the Commission's Director of Records and Reporting; the appropriate regional office of the Department of Environmental Protection; and the appropriate water management district.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 367.081, F.S., to prohibit the PSC from imputing (deducting) prospective future contributions-in-aid-of-construction on utility investments in property used and useful in the public service. The PSC is required to consider as used and useful in the public service, certain utility property including land acquired or facilities constructed or to be constructed within a reasonable time in the future not to exceed 24 months after the end of the historic base year used to set the final rates. A longer period could be approved by the commission. The commission must consider property if: a) the property is needed to serve current customers, b) the property is needed to serve current and future customers for five years after the expected date of a final order on a rate request at

a growth rate equivalent to residential connections not to exceed 5% per year, or c) the property is needed to serve customers for more than five years after the expected date of a final order on a rate request, if the utility presents clear and convincing evidence to justify growth in the capacity longer than 5 years.

It would delete the current requirement that the PSC consider the investment of the utility in property within a "reasonable time in the future, unless extended by the commission, 24 months from the end of the historical test period used to set final rates." The bill uniformly applies the same growth periods for all used and useful property.

"Environmental compliance costs" are defined to include all reasonable expenses and fair return on any prudent investment incurred by a utility in complying with the requirements or conditions contained in any permitting, enforcement, or similar decisions of the U.S. Environmental Protection Agency, the Department of Environmental Protection, a water management district, or any other governmental entity with similar regulatory jurisdiction.

The bill expands the definition of "governmental authority" in s. 367.021(7), F.S., to include non-profit corporations formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility.

The bill further expands the exemptions in s. 367.022, F.S., from regulation by the PSC to include water facilities operated by private firms under water facility privatization contracts as defined in s. 153.91, F.S., and non-profit corporations formed for acting on behalf of a political subdivision with respect to a water or wastewater facility.

The bill deletes the provisions in s. 367.022(8), F.S., requiring resellers of water and wastewater to file documentation justifying the exemption with the PSC.

The sale or resale of wastewater services to a governmental authority or utility regulated by chapter 367, F.S. is also exempt from regulation by the PSC or subject to the provisions of this chapter.

The bill amends s. 367.071, F.S., to allow a utility to sell, assign, or transfer of a certificate of authorization, facilities, or any portion thereof, or its majority organization control, contingent upon PSC approval of such transactions.

The bill deletes the requirement that after a utility recovers its rate case expenses over the 4-year recovery period that it must reduce its rates by the amount of the rate case expense that was included in its rates.

The bill amends s. 367.0814, F.S., to provide that the PSC, either by its own motion, or by petition of the regulated utility, may authorize interim rate relief in staff assisted rate cases, until the effective date of the final order for permanent rates. The interim rate relief may be based on a test period different from the test period used for permanent rate relief and will be contingent upon a demonstration by the utility that the operation and maintenance expenses exceed its revenues. The interim rates may not exceed the level necessary to cover operation and maintenance expenses and may not include recovery of depreciation expense or return on investment.

The bill further provides, in staff assisted rate cases, that the PSC has the discretion to require that the difference between the utility's previously authorized rates and interim rates be secured by bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the PSC.

The bill provides that during a staff assisted rate case, if the utility becomes exempt from commission regulation or jurisdiction, any approved interim rates shall become final. If temporary rates were granted, any difference between the temporary rates and the interim rates must be refunded with interest to the customers. Currently any temporary rates must be discontinued and any money collected must be refunded to the customers with interest.

The bill corrects the inconsistency regarding the status of cases before the PSC when a utility becomes subject to regulation by a county during the pendency of the case. Section 367.082, F.S., is amended to conform with s. 367.171(5), F.S., to clarify that the case remains with the PSC until it is completed. A similar clarification to the staff assisted provisions of s. 367.0814(6), F.S., (renumbered

s. 367.0814(8) by the bill) was inadvertently omitted when the bill was amended on the floor of the Senate.

Section 2 of the bill provides that section 1, which amends s. 367.081, F.S., does not apply to rate cases pending on March 11, 1999. Additionally, in section 9, the bill provides that the act does not apply to rate cases pending on March 11, 1999.

Section 367.091, F.S., is amended to required that a utility must mail a copy of any application for new rates to the chief executive officer of the governing body of each county within its service area affected by the rate request. The PSC is required to grant the governing body intervenor status, upon its petition, in any rate change proceeding.

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?

No.

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

No.

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

No.

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?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

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?

No.

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

No.

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?

No.

- 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. STATUTE(S) AFFECTED:

Sections 367.021, 367.022, 367.071, 367.081, 367.0814, 367.0816, 367.082, and 367.091, F.S.

E. SECTION-BY-SECTION ANALYSIS:

N/A

IV. FISCAL ANALYSIS & 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:

Representatives from counties and consumers were concerned that the provisions of this bill would allow utilities to add expenses to their rate base and raise rates.

2. Direct Private Sector Benefits:

According to industry, allowing for an extended growth margin, utilities would be able to construct in larger plant increments allowing for benefits to be obtained through economies of scale which may allow for long run cost savings to ratepayers.

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

None.

D. **FISCAL COMMENTS:**

None.

V. 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.

VI. COMMENTS:

According to the industry, the rate setting provisions of this act would insure that there is more consistency between PSC economic decisions, DEP, and water management districts planning, design, and construction requirements. The industry maintains that the bill would encourage the construction of plant in larger increments thereby providing an opportunity to achieve more economies of scale, and arguably in the long run, result in rates lower than would have been possible otherwise.

According to the PSC, the changes in the margin reserve and contributions-in-aid-of-construction would allow the costs of future plant expansion to be recovered from current and future customers. The changes however would only effect rates when a utility files a rate case.

According to one consumer group, the legislation is unnecessary and can easily result in more rate cases demanding short-term rate increases or set the stage for larger increases in the longer term.

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DATE: July 20, 1999

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VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

CS/SB was substantially amended on the floor of the Senate to include provisions of SB 926, SB 1494, and SB 2234 (HB 1887).

VIII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Staff Director:

Wendy G. Holt

Patrick L. "Booter" Imhof

AS REVISED BY THE COMMITTEE ON WATER & RESOURCE MANAGEMENT:

Prepared by:

Staff Director:

Joyce Pugh

Joyce Pugh

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

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