Session Law 88-353

Florida Senate & House of Representatives

Follow this and additional works at: https://ir.law.fsu.edu/staff-analysis

Part of the Legislation Commons

Recommended Citation

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.
### COMMITTEE RECORDS

<table>
<thead>
<tr>
<th>H/S</th>
<th>Committee</th>
<th>Record Series: Folder title, etc.</th>
<th>Loc. Cite</th>
<th>√</th>
</tr>
</thead>
<tbody>
<tr>
<td>H</td>
<td>Select</td>
<td>Meeting file, 1992.03.08-11-12</td>
<td>19/1992</td>
<td></td>
</tr>
<tr>
<td></td>
<td>House</td>
<td>Bill file, 1992.03.08-11-12</td>
<td>19/1992</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>19/1998</td>
<td></td>
</tr>
</tbody>
</table>

- continued on reverse

### Senate/House Journals

<table>
<thead>
<tr>
<th>Page #</th>
<th>?</th>
<th>Date</th>
<th>Page #</th>
<th>?</th>
<th>Date</th>
</tr>
</thead>
</table>

### Committee/Floor Tapes

<table>
<thead>
<tr>
<th>H/S c/f</th>
<th>Committee/subcommittee name</th>
<th>Date</th>
<th>#</th>
<th>Location Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>H c</td>
<td>Select Sub Public Util -1995</td>
<td>5-3-93</td>
<td>1</td>
<td>920/4/4/253</td>
</tr>
<tr>
<td></td>
<td></td>
<td>5-9-93</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Other Documentation

<table>
<thead>
<tr>
<th>Record Series Title, folder title, etc.</th>
<th>Location Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td>H/S</td>
<td>Committee</td>
</tr>
<tr>
<td>-----</td>
<td>-----------</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NOTES**
H 1828 GENERAL BILL/1ST ENG by Science, Industry & Technology; Tobin (Similar CS/1ST ENG/S 1225, Compare CS/H 355)

Water & Sewer Systems/Regulation; (SUNSET) revises term "utility", as used in Water & Sewer Systems provisions to mean water or wastewater utility; exempts wastewater treatment plants operated exclusively for disposal of industrial wastewater from certain provisions; requires P.S.C. to grant or deny application within 90 days unless an objection is filed, etc. Amends Ch. 367; revives/adopts 367.011-.031,.071-.123,.156-.182; repeals 367.041-.061,.141,.151.

Effective Date: 10/01/89.

05/23/89 HOUSE Introduced. referred to Appropriations -HJ 626; Also referred to Rules & Calendar -HJ 626
05/30/89 HOUSE Withdrawn from Appropriations -HJ 785, Now in Rules & Calendar
05/31/89 HOUSE On Committee agenda—Rules & Calendar, 05/31/89, upon adjournment of House morning session, 413-C; Preliminary Committee Action by Rules & Calendar: Favorable; Comm. Report: Favorable by Rules & Calendar, placed on Calendar -HJ 985; Placed on Special Order Calendar
06/01/89 HOUSE Read second time -HJ 1112; Amendments adopted; Read third time: Passed as amended; YEAS 113 NAYS 0 -HJ 1120
06/01/89 SENATE In Messages: Received; Passed; YEAS 36 NAYS 0 -SJ 854
06/01/89 HOUSE Ordered enrolled
06/20/89 Signed by Officers and presented to Governor
07/05/89 Approved by Governor; Chapter No. 89-353.

NOTES: Above bill history from Division of Legislative Information's FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.
I. SUMMARY:

A. PRESENT SITUATION:

Chapter 367, Florida Statutes, provides the Florida Public Service Commission (commission) with rate setting jurisdiction over certain investor-owned water and sewer utilities, not otherwise exempt, in counties that either have opted for commission regulation or have had such regulation imposed by the Legislature. Once under the jurisdiction of the commission, a county must remain so for four continuous years before it may opt out of commission regulation. Currently, 33 of the 67 counties are subject to the commission's Chapter 367 jurisdiction. Investor-owned water and sewer utilities in so-called non-jurisdictional counties are regulated by the governing body of each county.

Section 367.171(6), F.S. requires that counties whose utilities were regulated by the commission on or after January 1, 1980, which subsequently ceased to be so regulated, must adopt and follow as minimum standards of regulation the provisions of Section 367.081, F.S. (Rates; procedure for fixing and changing) with some exceptions. Regulated utilities are essentially all persons operating a system, who provide water or sewer service to the public for compensation and are not exempted. Exemptions are listed in Section 367.022, F.S., and include bottled water services, governmental systems, manufacturers providing themselves with service, public lodging establishments providing service to their guests, landlords providing service to their tenants without specific compensation for the service, systems
serving 100 or fewer persons, organizations providing service only to their members who own and control the organizations, and persons reselling water or sewer service at a cost not exceeding the actual purchase price.

Water and sewer utilities, like telephone companies, but unlike electric and natural gas utilities, must obtain a certificate from the commission authorizing them to serve a particular geographic area prior to receiving a construction permit from the Department of Environmental Regulation. Permission to expand or delete territory from the certificated service area must be obtained from the commission prior to doing so. Utilities must also receive prior commission approval to sell, assign or transfer a certificate or any portion of their facilities. Water and sewer rates are set by the commission and interim rate relief may be had. Chapter 367, Florida Statutes, prohibits abandonment of water and sewer systems without giving notice of intent to do so and provides penalties.

The chapter would have been repealed on October 1, 1989, unless reenacted by the Legislature.

B. EFFECT OF PROPOSED CHANGES:

This bill saves Chapter 367, Florida Statutes, from repeal and modifies the law as described in the section-by-section analysis.

C. SECTION-BY-SECTION ANALYSIS:

Section 1

Subsection 367.011(1), Florida Statutes, is amended to change the chapter citation to the "Water and Wastewater System Regulatory Law."

Section 2

Section 367.021, Florida Statutes, is amended to add definitions and to reorder existing definitions.

Section 3

Section 367.022, Florida Statutes, is amended for technical reasons and to provide an exemption from regulation for "wastewater treatment plants operated exclusively for disposing of industrial wastewater."

Section 4

Subsection 367.031, Florida Statutes, is amended to require utilities to obtain a commission certificate prior to obtaining a consumptive use permit from a water management district. It requires the commission to grant or deny a request for a certificate within 90 days from the official date of a completed filing provided a timely objection is not filed, and for
technical purposes.

Section 5

Section 367.045, Florida Statutes, is created to consolidate the provisions previously located in sections 367.041, 367.051, 367.055, and 367.061, Florida Statutes, and for technical purposes.

Section 6

Subsection 367.071(1), Florida Statutes, is amended to provide that a buyer, assignee, or transferee of a certificate of authorization will "fulfill the commitments, obligations, and representations of the utility."

Subsection 367.071(2), Florida Statutes, is created to provide that transfer of a certificate prior to either commission approval or notice of intent may subject the transferor to a penalty. Further, the transferor shall remain liable for assessment fees, fines and refunds of the utility.

Subsection 367.071(3), Florida Statutes, is amended for technical reasons.

Subsection 367.071(4), Florida Statutes, is amended to provide that any pending rate relief by a utility before the commission at the time of the transfer or sale of a utility to a governmental authority shall be deemed withdrawn.

Subsection 367.071(5), Florida Statutes, is amended for technical reasons.

Subsection 367.071(6), Florida Statutes, is created to provide that any person who obtains ownership or control over any utility system or part thereof through foreclosure of a mortgage or other encumbrance shall have the obligation to continue providing service in the stead of the certificate holder and may not remove or dismantle any part of the system.

Section 7

Subsection 367.081(1), Florida Statutes, is amended to state that a utility shall only charge rates and charges that have been approved by the commission.

Subsection 367.081(2), Florida Statutes, is amended to require that the commission, in setting rates, shall consider land acquired or property constructed or to be constructed in the public interest within a reasonable time in the future, not to exceed 24 months, from the end of the historical test period used to set final rates. Further, the commission is authorized, when establishing a utility's initial rates to consider data to a time when the utility is expected to be operating at a reasonable level of capacity.
Subsection 367.081(4), Florida Statutes, is amended to provide that a utility shall not use the price increase or decrease index rate setting methodology between the official filing date for such a case and one year thereafter. Further, the time period for providing notice of an automatic index increase is increased from 30 to 45 days. Reporting requirements previously referring to rate of return are changed to refer to rate of return on equity and the requirement that refunds be paid with interest is added.

Subsection 367.081(6), Florida Statutes, is amended to provide that new rates, subject to refund, may be placed into effect under escrow, in addition to bond or corporate undertaking.

Subsection 367.081(7), Florida Statutes, is created to provide that the commission shall determine the reasonableness of rate case expenses and disallow unreasonable expenses.

Subsection 367.081(8), Florida Statutes, is created to provide that a utility may specifically request that the commission utilize its proposed agency action procedure to process its request for rate relief.

Section 8

Section 367.0814, Florida Statutes, is created to provide procedures for obtaining commission staff assistance for the purpose of changing a utility's rates and charges.

Section 9

Subsection 367.0816, Florida Statutes, is created to provide that rate case expense shall be apportioned for recovery over a period of four years and that rates shall be lowered once the rate case expense is recovered.

Section 10

Subsection 367.082(2), Florida Statutes, is amended to provide that interim rates may be collected under escrow and letter of credit as well as under bond.

Subsection 367.082(7), Florida Statutes, is created to provide that if a utility becomes exempt from commission jurisdiction during the pendency of a rate case, the rate relief shall be deemed withdrawn and interim rates, if any, shall be discontinued and refunded with interest.

Section 11

Subsection 367.083, Florida Statutes, is amended to expand the time period the commission must rule on the acceptability of a utility's minimum filing requirements from 15 to 20 days.
Section 12

Section 367.084, Florida Statutes, is created to provide procedures relating to the commission's rate adjustment orders, the manner in which they are issued and distributed, and the time for appeals therefrom.

Section 13

Subsection 367.091(1), Florida Statutes, is created to require that all applications for rate changes must be in writing.

Subsection 367.091(2), Florida Statutes, is created to require that a utility's rates and charges must be in a tariff approved by the commission.

Subsection 367.091(3), Florida Statutes, is created to state that a utility may only charge rates approved by the commission for a particular class of service.

Subsection 367.091(5), Florida Statutes, is created to require that certain applications for rate increase must be accompanied by cost justifications.

Section 14

Section 367.101, Florida Statutes, is amended for clarity and to require the commission to set just and reasonable charges and conditions for service availability.

Section 15

Subsection 367.111(2), Florida Statutes, is amended to provide that the commission may reduce a utility's return on equity if it finds that the utility has failed to provide its customers with water that meets the standards promulgated by the Department of Environmental Regulation.

Section 16

Subsection 367.121, Florida Statutes, is amended to require the filing of reports and other data by public utilities and their affiliates.

Section 17

Section 367.122, Florida Statutes, is amended to provide that utility customers may pay for utility meter testing fees on their next regularly scheduled bill.

Section 18

Section 367.123, Florida Statutes, is amended for purposes of clarity.
Section 19

Section 367.145, Florida Statutes, is created to provide that the regulatory assessment fee shall be no more than 4.5 percent of gross revenues derived from intrastate business, that the fee shall be paid annually as part of the annual financial report required by the commission, and that penalties may be assessed for failure to timely pay assessment fees.

Section 20

Subsection 367.156(1), Florida Statutes, is amended to provide that the commission shall have access to the records of utility affiliates regarding transactions or cost allocations among the utility and its affiliates.

Subsection 367.156(2), Florida Statutes, is created to clarify what type of discovery information is deemed relevant and to provide for the protection of confidential materials.

Subsection 367.156(3), Florida Statutes, is amended to modify the definition of proprietary confidential business information.

Subsection 367.156(4), Florida Statutes, is created to set a limitation on the time a document may be withheld from public disclosure as being proprietary confidential business information.

Subsection 367.156(5), Florida Statutes, is created to state that this section is not subject to review pursuant to the provisions of Section 119.14, Florida Statutes.

Section 21

Section 367.161, Florida Statutes, is amended for technical reasons.

Section 22

Section 367.165, Florida Statutes, is amended for technical reasons.

Section 23

Subsection 367.171(1), Florida Statutes, is amended to provide that counties opting for commission regulation shall remain under that jurisdiction for 10 years, as opposed to the current 4 years.

Subsection 367.171(3), Florida Statutes, is amended to reflect the counties currently under commission jurisdiction, and to require that non-jurisdictional counties regulate their utilities pursuant to portions of Section 367.081, Florida Statutes.
Subsection 367.171(7), Florida Statutes, is created to provide that the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or not.

Section 24

Section 367.182, Florida Statutes, is amended to clarify the savings clause.

Section 25

Sections 367.041, 367.051, 367.055, 367.061, 367.141, and 367.151, Florida Statutes are repealed.

Section 26

This section saves Chapter 367, Florida Statutes, from Sunset repeal.

Section 27

This section provides for future repeal and review by the Legislature of Chapter 367, Florida Statutes.

Section 28

Provides that the prohibition in Section 367.145(3), Florida Statutes, shall not take effect until January 1, 1991.

Section 29

Provides that pending proceedings shall be governed by the law in effect when the proceeding was initiated.

Section 30

This section provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

   The proposed changes will have a negligible non-recurring or first-year start-up effect.

2. Recurring or Annualized Continuation Effects:

   Recurring or annualized continuation effects should be negligible.
3. Long Run Effects Other Than Normal Growth:
   None.

4. Appropriations Consequences:
   Appropriations consequences for the commission should be negligible.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   The majority of changes proposed should have little or no economic cost to the private sector.

2. Direct Private Sector Benefits:
   The majority of changes proposed should provide little or no economic benefits to the private sector.

3. Effects on Competition, Private Enterprise, and Employment Markets:
   Effects on competition and the private sector should be negligible.

D. FISCAL COMMENTS:
   None.

III. LONG RANGE CONSEQUENCES:

The long range consequences of this bill should be to lower utility rates, or their rate of growth, by more closely ensuring that only current, reasonable and necessary expenses are included. To the extent that utilities may have their return on equity reduced for failure to meet prescribed water quality standards, customers should benefit by a greater expectation of receiving water that meets such standards.
IV. COMMENTS:

To the extent that the proposed changes result in lower, fairer rates for higher quality service, the goal of helping to "insure our growth and continuing quality of life through dependable, affordable, and fair systems of utilities, telecommunications, and water and sewer management" will be assisted.

V. AMENDMENTS:

None.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by: Michael B. Twomey

SECOND COMMITTEE OF REFERENCE:

Prepared by:

APPROPRIATIONS:

Prepared by:

Staff Director: Tom Batchelor, Ph.D.
NOTICE OF COMMITTEE MEETING
House of Representatives

Science, Industry & Technology
Public Utilities

May 3 3:45 P.M. Room 413 Capitol

PCB SIT 89-02—Regulation of Water & Sewer Systems
HB 0342 by Patchett & others—Public Service Commission
HB 0355 by Smith—Water & Sewer Service/Rate Increases

Received in the Office of the Sergeant at Arms on
May 1, 1989
at 4:30 P.M. (time).

Filed by me with the Sergeant at Arms and the Clerk on
May 3, 1989
in compliance with Rule 6.

Distribution: Sergeant; Clerk (Calendar); Leg. Info.; others as required by Rule 6.

H-14(1987)
NOTICE OF COMMITTEE MEETING
House of Representatives

Science, Industry & Technology

Public Utilities

May 9 10:00 A.M. Room 214 Capitol

PCB SIT 89-02--Regulation of Water & Sewer Systems
HB 0350 by Flagg--Sales Tax/Solar Energy System
HB 0342 by Patchett & others--Public Service Commission

Received in the Office of the Sergeant at Arms on May 5, 1989
at 2:40 PM (time).

Sergeant at Arms

Filed by me with the Sergeant at Arms and the Clerk on May 5, 1989
in compliance with Rule 6.

Committee Secretary

Distribution: Sergeant; Clerk (Calendar); Leg. Info.; others as required by Rule 6.
TO: Chairman, Committee on Science, Industry & Technology

Subcommittee on Public Utilities
Date of Meeting May 9, 1989
Time 10:00 A.M.
Place 214 Capitol

FINAL ACTION: X Favorable
Favorable with Amendments
Favorable with Proposed Substitute
Unfavorable

VOTE:

<table>
<thead>
<tr>
<th>YEAS</th>
<th>MEMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Drape</td>
</tr>
<tr>
<td>X</td>
<td>Hargrett</td>
</tr>
<tr>
<td>X</td>
<td>Jones, C. Fred</td>
</tr>
<tr>
<td>X</td>
<td>Long</td>
</tr>
<tr>
<td>X</td>
<td>Mackenzie</td>
</tr>
<tr>
<td>X</td>
<td>Mortham</td>
</tr>
<tr>
<td>X</td>
<td>Gordon, Chairman</td>
</tr>
</tbody>
</table>

Total Yeas 5

IF PRESENT, MEMBER WOULD HAVE VOTED:

APPEARANCE RECORD

The following persons (other than legislators) appeared before the subcommittee during the consideration of this bill:

<table>
<thead>
<tr>
<th>Name</th>
<th>Representing</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glenn Ray</td>
<td>Florida Assn Counties</td>
<td>P.O. Box 549, Tallahassee, Fl</td>
</tr>
<tr>
<td>W.O. Birchfield</td>
<td>Fl. Waterworks Association</td>
<td>P.O. Box 59, Jacksonville, Fl</td>
</tr>
<tr>
<td>Chip Morrison</td>
<td>Fl. League of Cities</td>
<td>201 W. Park Ave., Tall., Fl.</td>
</tr>
<tr>
<td>John Marks</td>
<td>City of Tallahassee</td>
<td>Suite 400 1st Fl. Bank</td>
</tr>
<tr>
<td>Michael Wilson</td>
<td>Public Service Commission</td>
<td>101 East Gaines Street</td>
</tr>
</tbody>
</table>

Note: Please indicate by an "X" any State employee appearing at the request of the Chairman.

Received by Parent Committee:

Date: ___________________________

Received by: ___________________
If amendment is text of another bill insert:
Bill No. Draft No.

Representative

offered the following amendment:

Amendment
On page...38... line...21...

after the period insert: Each county which is excluded from
the provisions of this chapter by this subsection shall
regulate the rates of all utilities in that county which would
otherwise be subject to regulation by the commission pursuant
to s. 367.081. For this purpose the county or its agency
shall proceed as though the county or agency is the
commission.

*add language to (concluded). R. Glen Bose

by direction of chair

("this shall not preclude...")

Submit original
and five copies

Date: May 9, 1989
(sub: Public Util.)

Code: pcb2/999-07

Time:
NOTICE OF COMMITTEE MEETING
House of Representatives

Science, Industry & Technology
FULL COMMITTEE
May 11 3:30 P.M. Room 413 Capitol

Ratification of action by the Subcommittee on Public Utilities:
HB 0342 by Patchett & others--Public Service Commission

Consideration of the following bills:
HB 0350 by Flagg--Sales Tax/Solar Energy System
HB 0355 by Smith--Water & Sewer Service/Rate Increases
HB 1646 by Bloom--Underground Utility Safety Act
PCB SIT 89-02--Regulation of Water & Sewer Systems
Committee on Science, Industry & Technology

Date of Meeting: May 11, 1989

Time: 3:30 p.m.

Place: 413 Capitol

Bill No.: PCB SIT 89-02

**FINAL ACTION:**
- **X** Favorable
- **__** Favorable with **__** Amendments
- **__** Favorable with Substitute
- **__** Unfavorable

### VOTE:

<table>
<thead>
<tr>
<th>YEAS</th>
<th>MEMBER</th>
<th>NAYS</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>Tom Banjanin</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Thomas Drage</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Lois Frankel</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Michael Friedman</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Ron Glickman</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Elaine Gordon</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Lars Hafner</td>
<td></td>
</tr>
<tr>
<td></td>
<td>James Hargrett</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Harry Jennings</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>C. Fred Jones</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>John Long</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Anne Mackenzie</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Sid Martin</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Sandra Mortham</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Vernon Peeples</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Steve Press</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Charlie Roberts</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>R. Z. Safley</td>
<td></td>
</tr>
<tr>
<td>X</td>
<td>Dixie Sansom</td>
<td></td>
</tr>
</tbody>
</table>

Total Yeas: 12

Total Nays: 0

**IF PRESENT, MEMBER WOULD HAVE VOTED:**

<table>
<thead>
<tr>
<th>YEAS</th>
<th>MEMBER</th>
<th>NAYS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**APPEARANCE RECORD**

The following persons (other than legislators) appeared before the committee during the consideration of this bill:

<table>
<thead>
<tr>
<th>Name</th>
<th>Representing</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Note:** Please indicate by an "X" any State employee appearing at the request of the Chairman.

(FILE WITH THE CLERK AND ATTACH SUBCOMMITTEE REPORT IF APPLICABLE)
### Full Committee Bill Action Worksheet

**Committee on Science, Industry & Technology**

**Meeting Date:** May 11, 1989  
**Time:** 3:30 p.m.

**Bill No.:** PCB SIT 89-02  
**Subject:** Water & Sewer Systems

**Place:** 413 Capitol  
**Date Received:**

**Date Reported:**

---

### Subcommittee Action Record:

- **Subcommittee on:**
  - Favorable
  - Favorable with amendments
  - Favorable with Proposed Substitute
  - Unfavorable
  - Temporarily Passed

---

### Full Committee Action:

- Favorable
- Favorable with Amendments
- Favorable with Committee Substitute
- Unfavorable
- Temporarily Passed
- Reconsidered
- Referred to Subcommittee

---

### Final Vote

**On Bill MEMBERS**

<table>
<thead>
<tr>
<th>Yeas</th>
<th>Nays</th>
<th>Sansom #1</th>
<th>Sansom #2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Members Present:**

- Tom Banjanin
- Thomas Drage, Jr.
- Lois Frankel
- Michael Friedman
- Ron Glickman
- Elaine Gordon
- Lars Hafner
- James Hargrett
- Harry Jennings
- C. Fred Jones
- John Long
- Anne Mackenzie
- Sid Martin
- Sandra Mortham
- Vernon Peeples
- Steve Press
- Charlie Roberts
- R. Z. Safley
- Dixie Sanson
- Jack Tobin, Chairman

**Yeas Nays TOTALS Yeas Nays Yeas Nays Yeas Nays Yeas Nays**

- 12 0

---

**Recorded:** May 11, 1989

---

**H-83(1989)**
MEMBER AMENDMENT (in computer)

Bill No. PCB_SIT 89-02a

Representative ......... offered the following amendment:

Amendment

On page...34..., line...27..., strike s. 367.081,

and insert: ss. 367.081(1), (2), (3) and (6).

Submit original and five copies

Code: pcb2a/999-16

Date:

Time:
I. SUMMARY:

A. PRESENT SITUATION:

Chapter 367, Florida Statutes, provides the Florida Public Service Commission (commission) with rate setting jurisdiction over certain investor-owned water and sewer utilities, not otherwise exempt, in counties that either have opted for commission regulation or have had such regulation imposed by the Legislature. Once under the jurisdiction of the commission, a county must remain so for four continuous years before it may opt out of commission regulation. Currently, 33 of the 67 counties are subject to the commission's Chapter 367 jurisdiction. Investor-owned water and sewer utilities in so-called non-jurisdictional counties are regulated by the governing body of each county.

Section 367.171(6), F.S. requires that counties whose utilities were regulated by the commission on or after January 1, 1980, which subsequently ceased to be so regulated, must adopt and follow as minimum standards of regulation the provisions of Section 367.081, F.S. (Rates; procedure for fixing and changing) with some exceptions. Regulated utilities are essentially all persons operating a system, who provide water or sewer service to the public for compensation and are not exempted. Exemptions are listed in Section 367.022, F.S., and include bottled water services, governmental systems, manufacturers providing themselves with service, public lodging establishments providing service to their guests, landlords providing service to their tenants without specific compensation for the service, systems serving 100 or fewer persons, organizations providing service only to their members who own and control the organizations, and persons reselling water or sewer service at a cost not exceeding the actual purchase price.

Water and sewer utilities, like telephone companies, but unlike
electric and natural gas utilities, must obtain a certificate from the commission authorizing them to serve a particular geographic area prior to receiving a construction permit from the Department of Environmental Regulation. Permission to expand or delete territory from the certificated service area must be obtained from the commission prior to doing so. Utilities must also receive prior commission approval to sell, assign or transfer a certificate or any portion of their facilities. Water and sewer rates are set by the commission and interim rate relief may be had. Chapter 367, Florida Statutes, prohibits abandonment of water and sewer systems without giving notice of intent to do so and provides penalties.

The chapter will be repealed on October 1, 1989, unless reenacted by the Legislature.

B. EFFECT OF PROPOSED CHANGES:

This bill saves Chapter 367, Florida Statutes, from repeal and modifies the law as described in the section-by-section analysis.

C. SECTION-BY-SECTION ANALYSIS:

Section 1

Subsection 367.011(1), Florida Statutes, is amended to change the chapter citation to the "Water and Wastewater System Regulatory Law."

Section 2

Subsection 367.021(3), Florida Statutes, is amended to clarify the definition of "utility."

Subsection 367.021(4), Florida Statutes, is amended to clarify the definition of "system."

Subsection 367.021(5), Florida Statutes, is amended to replace the "governmental agency" with "governmental authority."

Subsection 367.021(9), Florida Statutes, is created to provide a definition for "wastewater."

Subsection 367.021(10), Florida Statutes, is created to provide a definition for "domestic wastewater."

Subsection 367.021(11), Florida Statutes, is created to provide a definition for "industrial wastewater."

Subsection 367.021(12), Florida Statutes, is created to provide a definition for "effluent reuse."

Subsection 367.021(13), Florida Statutes, is created to provide a definition for "contributions-in-aid-of-construction (CIAC)."

Subsection 367.021(14), Florida Statutes, is created to provide a definition for "last day of notice."
Section 3

Subsection 367.022(7), Florida Statutes, is amended for technical purposes.

Subsection 367.022(8), Florida Statutes, is amended to incorporate the new definition of "wastewater."

Subsection 367.022(9), Florida Statutes, is created to provide an exemption from regulation for "wastewater treatment plants operated exclusively for disposing of industrial wastewater."

Section 4

Subsection 367.031, Florida Statutes, is amended to require utilities to obtain a commission certificate prior to obtaining a consumptive use permit from a water management district. It requires the commission to grant or deny a request for a certificate within 90 days from the official date of a completed filing provided a timely objection is not filed, and for technical purposes.

Section 5

Section 367.041, Florida Statutes, is amended to change the title to indicate that the section deals with "initial certificates."

Subsection 367.041(2), Florida Statutes, is amended for clarity.

Subsection 367.041(3), Florida Statutes, is amended for technical purposes.

Subsection 367.041(4), Florida Statutes, is amended for clarity and to delete unnecessary notice provisions.

Subsection 367.041(5), Florida Statutes, is created to require that applications be filed within 30 days after the completion of notice requirements.

Section 6

Section 367.051, Florida Statutes, is amended to change the title to indicate that the section deals with amendments to certificates.

Subsection 367.051(1), Florida Statutes, is created to provide new notice requirements.

Subsection 367.051(2), Florida Statutes, is amended to extend from 20 to 30 days the period after notice is given, without receipt of a written objection, that the commission may dispose of an application without hearing.

Subsection 367.051(3), Florida Statutes, is amended to extend an objection period from 20 to 30 days.

Subsection 367.051(4), Florida Statutes, is amended to provide
that the commission may "amend" as well as grant certificate applications.

Subsection 367.051(5), Florida Statutes, is created to provide that objections to proposed certificates must be filed with the commission within 30 days from the last day of notice.

Subsection 367.051(6), Florida Statutes, is amended for clarification.

Section 7

Subsection 367.055(2), Florida Statutes, is amended for clarity.

Subsection 367.055(3), Florida Statutes, is amended to expand the period for filing an objection from 20 to 30 days.

Subsection 367.055(4), Florida Statutes, is amended to require the commission to order a hearing if it receives an objection within 30 as opposed to 20 days.

Section 8

Section 367.061, Florida Statutes, is amended to change the title to indicate that the section deals with applications for amendments of certificates.

Subsections 367.061(1), Florida Statutes, is amended for clarity.

Subsections 367.061(2), Florida Statutes, is amended for clarity.

Subsections 367.061(3), Florida Statutes, is created to provide that a utility may proceed with its extension of service if either no timely objections are received or if timely objections are dismissed.

Subsections 367.061(4), Florida Statutes, is amended for clarity.

Subsections 367.061(5), Florida Statutes, is created to state the requirements an applicant for a certificate amendment must meet under circumstances where construction may start prior to the filing of an application for amendment of certificate.

Subsections 367.061(6), Florida Statutes, is created to state the requirements an applicant for a certificate amendment must meet under circumstances where construction may not start prior to the filing of an application for amendment of certificate.

Subsections 367.061(7), Florida Statutes, is created to provide that the commission shall issue an amended certificate describing both previously authorized territory and additional territory included in the extension.

Subsections 367.061(8), Florida Statutes, is created to provide that territory noticed for extension may be protected from the line extensions of other utilities during the application filing period.
**Section 9**

Section 367.065, Florida Statutes, is created to prohibit any water and wastewater utility, whether regulated by the commission or not, from providing utility service within the certificated territory of a commission-regulated utility. The section also provides for injunctive relief.

**Section 10**

Subsection 367.071(2), Florida Statutes, is created to provide that transfer of a certificate prior to either commission approval or notice of intent may subject the transferor to a penalty. Further, the transferor shall remain liable for assessment fees, fines and refunds of the utility.

Subsection 367.071(3), Florida Statutes, is amended for technical reasons.

Subsection 367.071(4), Florida Statutes, is amended to provide that any pending rate relief by a utility before the commission at the time of the transfer or sale of a utility to a governmental authority shall be deemed withdrawn.

Subsection 367.071(5), Florida Statutes, is amended for technical reasons.

Subsection 367.071(6), Florida Statutes, is created to provide that any person who obtains ownership or control over any utility system or part thereof through foreclosure of a mortgage or other encumbrance shall have the obligation to continue providing service in the stead of the certificate holder and may not remove or dismantle any part of the system.

**Section 11**

Subsection 367.081(1), Florida Statutes, is amended to state that a utility shall only charge rates and charges that have been approved by the commission.

Subsection 367.081(2), Florida Statutes, is amended to require that the commission, in setting rates, shall consider land acquired or property constructed or to be constructed in the public interest within a reasonable time in the future, not to exceed 24 months, from the end of the historical test period used to set final rates. Further, the commission is authorized, when establishing a utility's initial rates to consider data to a time when the utility is expected to be operating at a reasonable level of capacity such that economies of scale may be achieved.

Subsection 367.081(4), Florida Statutes, is amended to provide that a utility shall not use the price increase or decrease index rate setting methodology during the pendency of a rate case or between the official filing date for such a case and one year thereafter. Further, the time period for providing notice of an automatic index increase is increased from 30 to 45 days. Reporting requirements previously referring to rate of return are changed to refer to rate of return on equity and the requirement...
that refunds be paid with interest is added.

Subsection 367.081(6), Florida Statutes, is amended to provide that new rates, subject to refund, may be placed into effect under escrow, in addition to bond or corporate undertaking.

Subsection 367.081(7), Florida Statutes, is created to provide that a utility may specifically request that the commission process a rate request using the commission's Proposed Agency Action Procedure. The commission is required to enter its vote on the procedure within 5 months of the official filing date if the application is not opposed and within 8 months of the date a protest is filed against such a requested case.

Section 12

Section 367.0811, Florida Statutes, is created to provide procedures for obtaining commission staff assistance for the purpose of changing a utility's rates and charges.

Section 13

Subsection 367.082(2), Florida Statutes, is amended to provide that interim rates may be collected under escrow and letter of credit as well as under bond.

Subsection 367.082(7), Florida Statutes, is created to provide that if a utility becomes exempt from commission jurisdiction during the pendency of a rate case, the rate relief shall be deemed withdrawn and interim rates, if any, shall be discontinued and refunded with interest.

Section 14

Subsection 367.083, Florida Statutes, is amended to expand the time period the commission must rule on the acceptability of a utility's minimum filing requirements from 15 to 20 days.

Section 15

Section 367.084, Florida Statutes, is created to provide procedures relating to the commission's rate adjustment orders, the manner in which they are issued and distributed, and the time for appeals therefrom.

Section 16

Subsection 367.091(1), Florida Statutes, is created to require that all applications for rate changes must be in writing.

Subsection 367.091(2), Florida Statutes, is created to require that a utility's rates and charges must be in a tariff approved by the commission.

Subsection 367.091(3), Florida Statutes, is created to state that a utility may only charge rates approved by the commission for a particular class of service.
Subsection 367.091(5), Florida Statutes, is created to require that certain applications for rate increase must be accompanied by cost justifications.

Section 17
Section 367.101, Florida Statutes, is amended for clarity.

Section 18
Subsection 367.111(2), Florida Statutes, is amended to provide that the commission may reduce a utility's return on equity if it finds that the utility has failed to provide its customers with water that meets the standards promulgated by the Department of Environmental Regulation.

Section 19
Subsection 367.121(3), Florida Statutes, is created to require that the commission chairman shall, upon the petition of one or more of the parties to a proceeding, refer such proceeding to the Division of Administrative Hearings.

Section 20
Section 367.151(1), Florida Statutes, is amended to provide that utilities shall pay regulatory assessment fees in accordance with a new schedule contained in this section, notwithstanding the existence of a regulatory assessment fee schedule in Chapter 350, Florida Statutes.

Subsection 367.151(2), Florida Statutes, is created to provide that the regulatory assessment fee shall be no more than 2.5 percent of gross revenues derived from intrastate business, that the fee shall be paid annually as part of the annual financial report required by the commission, and that penalties may be assessed for failure to timely pay assessment fees.

Section 21
Subsection 367.156(1), Florida Statutes, is amended to provide that the commission shall have access to the records of utility affiliates containing information which affects the utility's rates or cost of service and to make clear that exemptions for proprietary confidential business information are subject to the Open Government Sunset Act.

Subsection 367.156(2), Florida Statutes, is created to clarify what type of discovery information is deemed relevant and to provide for the protection of confidential materials.

Subsection 367.156(3), Florida Statutes, is created to provide for the issuance of protective orders for proprietary confidential business information.

Subsection 367.156(4), Florida Statutes, is amended to more strictly limit the type of information the commission may find to be proprietary confidential business information and to expand
the statutory definition to include certain information of affiliated companies.

Subsection 367.156(5), Florida Statutes, is created to limit commission protection of information found to be proprietary confidential business information to 18 months unless extensions are granted.

Section 22

Section 367.165, Florida Statutes, is amended for technical reasons.

Section 23

Subsection 367.171(1), Florida Statutes, is amended to provide that all Florida counties shall become subject to the jurisdiction of Chapter 367, Florida Statutes, by no later than January 1, 1995, which would require that the investor-owned water and wastewater utilities of all counties be regulated by the commission by that date.

Subsection 367.171(7), Florida Statutes, is created to provide that the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or not.

Section 24

Section 367.182, Florida Statutes, is amended to clarify the savings clause.

Section 25

This section saves Chapter 367, Florida Statutes, from Sunset repeal.

Section 26

This section provides for future repeal and review by the Legislature of Chapter 367, Florida Statutes.

Section 27

This section provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

The proposed changes, if enacted, will have variable non-recurring or first year start-up effects on state agencies depending primarily on the number of proceedings referred to the Division of Administrative Hearings (DOAH) and the rate at which non-jurisdictional counties opt-in for commission
jurisdiction prior to the January, 1995 deadline. The fiscal impact of parties requesting hearings at DOAH is difficult to gauge without knowing the volume of cases that will be transferred. However, assuming a necessary computer upgrade and the establishment of one staff assistant position, DOAH has estimated its first-year, non-recurring costs at $81,907 and its annual recurring costs at $59,467. These funds would be transferred from the commission's trust fund to that of DOAH. The commission has estimated that assuming jurisdiction for all counties for water and sewer regulation would require an additional 48.8 full-time equivalent positions above requested staffing levels for 1989-1990 and 42.8 over requested levels for 1990-1991. How many positions and their associated costs will actually be required initially and in succeeding years will depend upon the rate at which non-jurisdictional counties opt-in for commission regulation prior to the January, 1995 deadline.

2. Recurring or Annualized Continuation Effects:

Recurring or annualized continuation effects will vary with the number of cases referred to DOAH and the number of counties that opt-in for commission regulation of their investor-owned water and sewer utilities. The DOAH has forecast its recurring expenses associated with receiving proceedings from the commission to be $59,467, assuming the establishment of one staff assistant position, increased computer costs, and increased travel expenses for hearing officers. Recurring expenses for the commission as the result of having jurisdiction over increasing numbers of counties will vary with the number of counties opt-in. Currently, the expense is indeterminate.

3. Long Run Effects Other Than Normal Growth:

None.

4. Appropriations Consequences:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

As non-jurisdictional counties opt-in for commission jurisdiction, their expenses associated with providing regulation for their investor-owned water and sewer utilities should diminish and then cease.

2. Recurring or Annualized Continuation Effects:

As non-jurisdictional counties opt-in for commission jurisdiction, their expenses associated with providing regulation for their investor-owned water and sewer utilities should diminish and then cease.
3. **Long Run Effects Other Than Normal Growth:**

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. **Direct Private Sector Costs:**

   The majority of changes proposed should have little or no economic cost to the private sector. Where non-jurisdictional counties become jurisdictional it is assumed that the cost of regulation should remain approximately the same.

2. **Direct Private Sector Benefits:**

   The majority of changes proposed should provide little or no economic benefits to the private sector. However, consolidating the regulation of all investor-owned water and sewer utilities in the commission should prove more efficient than the current situation in which numerous agencies perform the same function.

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

   Effects on competition and the private sector should be negligible. The gradual transfer of the regulation of investor-owned water and sewer utilities from the currently non-jurisdictional counties to the commission can be expected to have a minimal effect on employment markets to the extent that regulatory work is transferred.

D. **FISCAL COMMENTS:**

III. **LONG RANGE CONSEQUENCES:**

As non-jurisdictional counties opt-in for commission regulation, the long-range consequence should be more uniform, state-wide regulation of water and sewer utilities at a lower overall cost. To the extent that utilities may have their return on equity reduced for failure to meet prescribed water quality standards, customers should benefit by a greater expectation of receiving water that meets such standards.

IV. **COMMENTS:**

To the extent that the proposed changes result in lower, fairer rates for higher quality service, the goal of helping to "insure our growth and continuing quality of life through dependable, affordable, and fair systems of utilities, telecommunications, and water and sewer management" will be assisted.

V. **AMENDMENTS:**

None.
VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by: [Signature]
Michael B. Twomey

SECOND COMMITTEE OF REFERENCE:
Prepared by: [Signature]

APPROPRIATIONS:
Prepared by: [Signature]

Staff Director: [Signature]
Tom Batchelor, Ph.D.
A bill to be entitled
An act relating to the regulation of water and
sewer systems; amending s. 367.011, F.S.;
revising how ch. 367, F.S., may be cited;
amending s. 367.021, F.S.; revising the term
"utility," as used in ch. 367, F.S., to mean a
water or wastewater utility; revising and
adding other definitions of terms used in ch.
367. F.S.; amending s. 367.022, F.S., relating
to exemptions; conforming terminology used;
exempting wastewater treatment plants operated
exclusively for disposing of industrial
wastewater from ch. 367. F.S.; amending s.
367.031, F.S.; requiring utilities to obtain
certificates prior to being issued permits by
the Department of Environmental Regulation or a
water management district; requiring the
commission to grant or deny an application
within 90 days unless an objection is filed;
amending s. 367.041, F.S.; requiring a utility
to file its application within 30 days after
notice; amending s. 367.051, F.S.; specifying
notice provisions for certificate amendments;
amending s. 367.055, F.S.; specifying notice
provisions for certificate deletions; amending
s. 367.061, F.S.; specifying notice and other
requirements for certificate extensions;
creating s. 367.065, F.S.; prohibiting utility
encroachment; amending s. 367.071, F.S.;
providing a penalty if a transfer occurs prior
to commission approval; conforming terminology

CODING: Words struck through are deletions; words underlined are additions.
A bill to be entitled
An act relating to the regulation of water and
sewer systems; amending s. 367.011, F.S.;
revising how ch. 367, F.S., may be cited;
amending s. 367.021, F.S.; revising the term
"utility," as used in ch. 367, F.S., to mean a
water or wastewater utility; revising and
adding other definitions of terms used in ch.
367, F.S.; amending s. 367.022, F.S., relating
to exemptions; conforming terminology used;
exempting wastewater treatment plants operated
exclusively for disposing of industrial
wastewater from ch. 367, F.S.; amending s.
367.031, F.S.; requiring utilities to obtain
certificates of authorization prior to being
issued permits by the Department of
Environmental Regulation or a water management
district; requiring the commission to grant or
deny an application within 90 days unless an
objection is filed; creating s. 367.045, F.S.;
providing application and amendment procedures
that utilities must follow when applying for an
original or amended certificate of
authorization; providing for objections and
hearings thereon; amending s. 367.071, F.S.;
providing a penalty if a transfer occurs prior
to commission approval; conforming terminology
used; revising cross-references; providing for
the discontinuation and refund of interim
rates; requiring that systems obtained through
foreclosure continue providing service

CODING: Words stricken are deletions; words underlined are additions.
may be the governing body of a political subdivision or any other person deemed appropriate. The receiver shall operate the utility from the date of abandonment until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service.

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

Section 20. Subsections (1), (2), (3), and (4) of section 367.171, Florida Statutes, are amended and subsection (7) is added to said section to read:

367.171 Effectiveness of this chapter.--

(1) The provisions of this chapter shall become effective in a county of this state upon the adoption of a resolution by the board of county commissioners of such county, or, in counties operating under a countywide charter, by the appropriate board, declaring that such county is subject to the provisions of this chapter. Any board of county commissioners which adopts such a resolution shall immediately notify the commission of its adoption and submit the resolution to the commission. A county, after 10 years under the jurisdiction of the commission, may by resolution or ordinance rescind any prior resolution or ordinance imposing commission jurisdiction and thereby exclude itself from the provisions of this chapter, except that the

CODING: Words struck are deletions; words underlined are additions.
A county may not exclude itself from the provisions of this section.

(2)(a) Within 30 days after this chapter becomes applicable to a county, each utility shall register by filing with the commission a written statement setting forth the full legal name of the utility, its mailing address, and a brief description of its area of service.

(b) On the day this chapter becomes applicable to any county, any utility engaged in the operation or construction of a system shall be entitled to receive a certificate for the area served by such utility on the day this chapter becomes applicable to it. Rates and charges then in effect shall be deemed approved and shall remain in effect until changed by the commission. Within 90 days after the day this chapter becomes applicable to it, the utility shall make application for a certificate by filing with the commission:

1. A map of its existing system or system under construction;
2. A description of the area served by the system; and
3. A tariff listing all rates and charges and such other financial information as may be required by the commission.

Such application shall be accompanied by a fee as provided by s. 367.141. If a utility fails to register with the commission within the prescribed time, the commission may require that the utility apply for an original certificate of authorization in accordance with s. 367.045.

(c) Before the commission issues a certificate of authorization under paragraph (b), it may establish the amount of money prudently invested in property of the utility, which

CODING: Words strucken are deletions; words underlined are additions.
property is used and useful in the public service; may
establish other elements of the rate base; and may set and
approve rates pursuant to s. 367.081.

(3) In consideration of the variance of powers,
duties, responsibilities, population, and size of
municipalities of the several counties and in consideration of
the fact that every county varies from every other county and
thereby affects the functions, duties, and responsibilities
required of its county officers and the scope of
responsibilities which each county may, at this time,
undertake, the Counties of Alachua, Baker, Bradford, Calhoun,
Charlotte, Collier—Columbia; Dade, DeSoto; Dixie, Escambia,
Gadsden, Gilchrist, Glades, Gulf; Hamilton, Hardee, Hendry,
Highlands; Hillsborough, Holmes, Indian River, Jefferson,
Lafayette, Leon, Levy; Liberty, Madison, Manatee, Marion;
Martin; Okaloosa, Okeechobee, Polk, St. Lucie, Santa Rosa, St.
Johns; Sarasota, Sumter, Suwannee, Taylor, Union, Wakulla, and
Walton Washington are excluded from the provisions of this
chapter until such time as the board of county commissioners
of any such county, acting pursuant to the provisions of
subsection (1), makes this chapter applicable to such county
or until the Legislature, by appropriate act, removes one or
more of such counties from this exclusion. Each county which
is excluded from the provisions of this chapter by this
subsection shall regulate the rates of all utilities in that
county which would otherwise be subject to regulation by the
commission pursuant to s. 367.081. For this purpose the
county or its agency shall proceed as though the county or
agency is the commission.

(4) As of the day a utility is no longer regulated by
the commission under this chapter, each such utility which is

CODING: Words stricken are deletions; words underlined are additions.
engaged in the operation or construction of a system shall be
titled to receive from the county in which it is located and
operating a certificate of authorization for each area for
which such utility held a certificate of authorization from
the commission on the day the utility became subject to
regulation by the county. The utility will make application
by filing with the governing body of the county:

(7) Notwithstanding anything herein to the contrary,
the commission shall have exclusive jurisdiction over all
utility systems whose service transverses county boundaries,
whether the counties involved are jurisdictional or non-
jurisdictional.

Section 21. Section 367.182, Florida Statutes, is
amended to read:

367.182 Saving clause.--All certificates and
authorizations valid on the effective date of chapter 80-99,
Laws of Florida, shall remain in full force and effect.
Henceforth, all certificates and authorizations shall be
applied for and renewed in accordance with this act.

Section 22. Sections 367.041, 367.051, 367.055, and
367.061, Florida Statutes, are hereby repealed.

Section 23. Notwithstanding the provisions of section
2 of chapter 81-318, section 15 of chapter 82-25, or section 8
of chapter 84-149, Laws of Florida, sections 367.011, 367.021,
367.022, 367.031, 367.071, 367.081, 367.082, 367.0822,
367.083, 367.091, 367.101, 367.111, 367.121, 367.122, 367.123,
367.141, 367.151, 367.156, 367.161, 367.165, 367.171, and
367.182, Florida Statutes, shall not stand repealed October 1,
1989, as scheduled by such laws, but such sections, as amended
by this act, are hereby revived and readopted.

CODING: Words stricken are deletions; words underlined are additions.
shall petition the circuit court of the judicial circuit in which such utility is domiciled to appoint a receiver, which may be the governing body of a political subdivision or any other person deemed appropriate. The receiver shall operate the utility from the date of abandonment until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service.

Section 23. Subsections (1), (2), and (3) of section 367.171, Florida Statutes, are amended and subsection (7) is added to said section to read:

367.171 Effectiveness of this chapter.--

(1) The provisions of this chapter shall become effective in a county of this state upon the adoption of a resolution by the board of county commissioners of such county, or, in counties operating under a countywide charter, by the appropriate board, declaring that such county is subject to the provisions of this chapter. Any board of county commissioners which adopts such a resolution shall immediately notify the commission of its adoption and submit the resolution to the commission. Provided, however, that each county of this state shall be subject to the provisions of this chapter by no later than January 1, 1995. A county, after 4 continuous years under the jurisdiction of the commission, may by resolution or ordinance rescind any prior resolution or ordinance imposing commission jurisdiction and thereby exclude itself from the provisions of this chapter except that the county may not exclude itself from the provisions of this section.

(2)(a) Within 30 days after this chapter becomes applicable to a county, each utility shall register by filing

CODING: Words stricken are deletions; words underlined are additions.
with the commission a written statement setting forth the full
legal name of the utility, its mailing address, and a brief
description of its area of service area.

(b) On the day this chapter becomes applicable to any
county, any utility engaged in the operation or construction
of a system shall be entitled to receive a certificate for the
area served by such utility on the day this chapter becomes
applicable to it. Rates and charges then in effect shall be
deemed approved and shall remain in effect until changed by
the commission. Within 90 days after the day this chapter
becomes applicable to it, the utility shall make application
for a certificate by filing with the commission:

1. A map of its existing system or system under
construction;

2. A description of the area served by the system; and

3. A tariff listing all rates and charges and such
other financial information as may be required by the
commission.

Such application shall be accompanied by a fee as provided by
§ 367.145 s. If a utility fails to register with
the commission within the prescribed time, the commission may
require that the utility apply for an original certificate in
accordance with § 367.045.

(c) Before the commission issues a certificate under
paragraph (b), it may establish the amount of money prudently
invested in property of the utility, which property is used
and useful in the public service; may establish other elements
of the rate base; and may set and approve rates pursuant to §
367.081.

CODING: Words stricken are deletions; words underlined are additions.
(3) In consideration of the variance of powers, duties, responsibilities, population, and size of municipalities of the several counties and in consideration of the fact that every county varies from every other county and thereby affects the functions, duties, and responsibilities required of its county officers and the scope of responsibilities which each county may, at this time, undertake, the Counties of Alachua, Baker, Bradford, Calhoun, Charlotte, Citrus, Columbia, Dade, DeSoto, Dixie, Escambia, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Hillsborough, Holmes, Indian River, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Okaloosa, Okeechobee, Polk, St. Lucie, Santa Rosa, St. John's, Sarasota, Sumter, Suwannee, Taylor, Union, Wakulla, and Walton Washington are excluded from the provisions of this chapter until such time as the board of county commissioners of any such county, acting pursuant to the provisions of subsection (1), makes this chapter applicable to such county or until January 1, 1995, whichever occurs first the legislature—by-appropriate-act-removes-one-or-more-of-such counties-from-this-exclusion.

(7) Notwithstanding anything herein to the contrary, the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or non-jurisdictional.

Section 24. Section 367.182, Florida Statutes, is amended to read:

367.182 Saving clause.—All certificates and authorizations valid on the effective date of chapter 80-99, Laws of Florida, shall remain in full force and effect.

CODING: Words stricken are deletions; words underlined are additions.
I. SUMMARY:

A. PRESENT SITUATION:

Chapter 367, Florida Statutes, provides the Florida Public Service Commission (commission) with rate setting jurisdiction over certain investor-owned water and sewer utilities, not otherwise exempt, in counties that either have opted for commission regulation or have had such regulation imposed by the Legislature. Once under the jurisdiction of the commission, a county must remain so for four continuous years before it may opt out of commission regulation. Currently, 33 of the 67 counties are subject to the commission's Chapter 367 jurisdiction. Investor-owned water and sewer utilities in so-called non-jurisdictional counties are regulated by the governing body of each county.

Section 367.171(6), F.S. requires that counties whose utilities were regulated by the commission on or after January 1, 1980, which subsequently ceased to be so regulated, must adopt and follow as minimum standards of regulation the provisions of Section 367.081, F.S. (Rates; procedure for fixing and changing) with some exceptions. Regulated utilities are essentially all persons operating a system, who provide water or sewer service to the public for compensation and are not exempted. Exemptions are listed in Section 367.022, F.S., and include bottled water services, governmental systems, manufacturers providing themselves with service, public lodging establishments providing service to their guests, landlords providing service to their tenants without specific compensation for the service, systems serving 100 or fewer persons, organizations providing service only to their members who own and control the organizations, and persons reselling water or sewer service at a cost not exceeding the actual purchase price.

Water and sewer utilities, like telephone companies, but unlike
electric and natural gas utilities, must obtain a certificate from the commission authorizing them to serve a particular geographic area prior to receiving a construction permit from the Department of Environmental Regulation. Permission to expand or delete territory from the certificated service area must be obtained from the commission prior to doing so. Utilities must also receive prior commission approval to sell, assign or transfer a certificate or any portion of their facilities. Water and sewer rates are set by the commission and interim rate relief may be had. Chapter 367, Florida Statutes, prohibits abandonment of water and sewer systems without giving notice of intent to do so and provides penalties.

The chapter will be repealed on October 1, 1989, unless reenacted by the Legislature.

B. EFFECT OF PROPOSED CHANGES:

This bill saves Chapter 367, Florida Statutes, from repeal and modifies the law as described in the section-by-section analysis.

C. SECTION-BY-SECTION ANALYSIS:

Section 1

Subsection 367.011(1), Florida Statutes, is amended to change the chapter citation to the "Water and Wastewater System Regulatory Law."

Section 2

Subsection 367.021(2), Florida Statutes, is amended to modify the definition of a "certificate of authorization".

Subsection 367.021(3), Florida Statutes, is amended to clarify the definition of "utility."

Subsection 367.021(4), Florida Statutes, is amended to clarify the definition of "system."

Subsection 367.021(5), Florida Statutes, is amended to replace the "governmental agency" with "governmental authority."

Subsection 367.021(9), Florida Statutes, is created to provide a definition for "wastewater."

Subsection 367.021(10), Florida Statutes, is created to provide a definition for "domestic wastewater."

Subsection 367.021(11), Florida Statutes, is created to provide a definition for "industrial wastewater."

Subsection 367.021(12), Florida Statutes, is created to provide a definition for "effluent reuse."
Subsection 367.021(13), Florida Statutes, is created to provide a definition for "contributions-in-aid-of-construction (CIAC)."

Subsection 367.021(14), Florida Statutes, is created to provide a definition for "last day of notice."

Subsection 367.021(15), Florida Statutes, is created to provide a definition for "service area".

Section 3

Subsection 367.022(7), Florida Statutes, is amended for technical purposes.

Subsection 367.022(8), Florida Statutes, is amended to incorporate the new definition of "wastewater."

Subsection 367.022(9), Florida Statutes, is created to provide an exemption from regulation for "wastewater treatment plants operated exclusively for disposing of industrial wastewater."

Section 4

Subsection 367.031, Florida Statutes, is amended to require utilities to obtain a commission certificate prior to obtaining a consumptive use permit from a water management district. It requires the commission to grant or deny a request for a certificate within 90 days from the official date of a completed filing provided a timely objection is not filed, and for technical purposes.

Section 5

Section 367.045, Florida Statutes, is created to consolidate the provisions previously located in sections 367.041, 367.051, 367.055, and 367.061, Florida Statutes, and for technical purposes.

Section 6

Subsection 367.071(1), Florida Statutes, is amended for technical reasons.

Subsection 367.071(2), Florida Statutes, is created to provide that transfer of a certificate prior to either commission approval or notice of intent may subject the transferor to a penalty. Further, the transferor shall remain liable for assessment fees, fines and refunds of the utility.

Subsection 367.071(3), Florida Statutes, is amended for technical reasons.

Subsection 367.071(4), Florida Statutes, is amended to provide that any pending rate relief by a utility before the commission...
at the time of the transfer or sale of a utility to a governmental authority shall be deemed withdrawn.

Subsection 367.071(5), Florida Statutes, is amended for technical reasons.

Subsection 367.071(6), Florida Statutes, is created to provide that any person who obtains ownership or control over any utility system or part thereof through foreclosure of a mortgage or other encumbrance shall have the obligation to continue providing service in the stead of the certificate holder and may not remove or dismantle any part of the system.

Section 7

Subsection 367.081(1), Florida Statutes, is amended to state that a utility shall only charge rates and charges that have been approved by the commission.

Subsection 367.081(2), Florida Statutes, is amended to require that the commission, in setting rates, shall consider land acquired or property constructed or to be constructed in the public interest within a reasonable time in the future, not to exceed 24 months, from the end of the historical test period used to set final rates. Further, the commission is authorized, when establishing a utility's initial rates to consider data to a time when the utility is expected to be operating at a reasonable level of capacity such that economies of scale may be achieved.

Subsection 367.081(4), Florida Statutes, is amended to provide that a utility shall not use the price increase or decrease index rate setting methodology during the pendency of a rate case or between the official filing date for such a case and one year thereafter. Further, the time period for providing notice of an automatic index increase is increased from 30 to 45 days.

Reporting requirements previously referring to rate of return are changed to refer to rate of return on equity and the requirement that refunds be paid with interest is added.

Subsection 367.081(6), Florida Statutes, is amended to provide that new rates, subject to refund, may be placed into effect under escrow, in addition to bond or corporate undertaking.

Subsection 367.081(7), Florida Statutes, is created to provide that a utility may specifically request that the commission process a rate request using the commission's Proposed Agency Action Procedure. The commission is required to enter its vote on the procedure within 5 months of the official filing date if the application is not opposed and within 8 months of the date a protest is filed against such a requested case.

Subsection 367.081(8), Florida Statutes, is created to require the commission to ensure that the rates and charges of all utilities reflect current federal and state corporate income tax rates by January 1, 1990.
Section 8

Section 367.0811, Florida Statutes, is created to provide procedures for obtaining commission staff assistance for the purpose of changing a utility's rates and charges.

Section 9

Subsection 367.082(2), Florida Statutes, is amended to provide that interim rates may be collected under escrow and letter of credit as well as under bond.

Subsection 367.082(7), Florida Statutes, is created to provide that if a utility becomes exempt from commission jurisdiction during the pendency of a rate case, the rate relief shall be deemed withdrawn and interim rates, if any, shall be discontinued and refunded with interest.

Section 10

Subsection 367.083, Florida Statutes, is amended to expand the time period the commission must rule on the acceptability of a utility's minimum filing requirements from 15 to 20 days.

Section 11

Section 367.084, Florida Statutes, is created to provide procedures relating to the commission's rate adjustment orders, the manner in which they are issued and distributed, and the time for appeals therefrom.

Section 12

Subsection 367.091(1), Florida Statutes, is created to require that all applications for rate changes must be in writing.

Subsection 367.091(2), Florida Statutes, is created to require that a utility's rates and charges must be in a tariff approved by the commission.

Subsection 367.091(3), Florida Statutes, is created to state that a utility may only charge rates approved by the commission for a particular class of service.

Subsection 367.091(5), Florida Statutes, is created to require that certain applications for rate increase must be accompanied by cost justifications.

Section 13

Section 367.101, Florida Statutes, is amended for clarity.

Section 14
Subsection 367.111(2), Florida Statutes, is amended to provide that the commission may reduce a utility's return on equity if it finds that the utility has failed to provide its customers with water that meets the standards promulgated by the Department of Environmental Regulation.

Section 15

Subsection 367.121(3), Florida Statutes, is created to require that the commission chairman shall, upon the petition of one or more of the parties to a proceeding, refer such proceeding to the Division of Administrative Hearings.

Section 16

Section 367.151(1), Florida Statutes, is amended to provide that utilities shall pay regulatory assessment fees in accordance with a new schedule contained in this section, notwithstanding the existence of a regulatory assessment fee schedule in Chapter 350, Florida Statutes.

Subsection 367.151(2), Florida Statutes, is created to provide that the regulatory assessment fee shall be no more than 4.5 percent of gross revenues derived from intrastate business, that the fee shall be paid annually as part of the annual financial report required by the commission, and that penalties may be assessed for failure to timely pay assessment fees.

Section 17

Subsection 367.156(1), Florida Statutes, is amended to provide that the commission shall have access to the records of utility affiliates containing information which affects the utility's rates or cost of service and to make clear that exemptions for proprietary confidential business information are subject to the Open Government Sunset Act.

Subsection 367.156(2), Florida Statutes, is created to clarify what type of discovery information is deemed relevant and to provide for the protection of confidential materials.

Subsection 367.156(3), Florida Statutes, is created to provide for the issuance of protective orders for proprietary confidential business information.

Subsection 367.156(4), Florida Statutes, is amended to more strictly limit the type of information the commission may find to be proprietary confidential business information and to expand the statutory definition to include certain information of affiliated companies.

Subsection 367.156(5), Florida Statutes, is created to limit commission protection of information found to be proprietary confidential business information to 18 months unless extensions are granted.
Section 18

Section 367.161, Florida Statutes, is amended for technical reasons.

Section 19

Section 367.165, Florida Statutes, is amended for technical reasons.

Section 20

Subsection 367.171(1), Florida Statutes, is amended to provide that counties opting for commission regulation shall remain under that jurisdiction for 10 years, as opposed to the current 4 years.

Subsection 367.171(3), Florida Statutes, is amended to reflect the counties currently under commission jurisdiction, and to require that non-jurisdictional counties regulate their utilities pursuant to Section 367.081, Florida Statutes.

Subsection 367.171(7), Florida Statutes, is created to provide that the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or not.

Section 21

Section 367.182, Florida Statutes, is amended to clarify the savings clause.

Section 22

Sections 367.041, 367.051, 367.055, and 367.061, Florida Statutes are repealed.

Section 23

This section saves Chapter 367, Florida Statutes, from Sunset repeal.

Section 24

This section provides for future repeal and review by the Legislature of Chapter 367, Florida Statutes.

Section 25

This section provides an effective date.
II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

   The proposed changes, if enacted, will have variable non-recurring or first year start-up effects on state agencies depending primarily on the number of proceedings referred to the Division of Administrative Hearings (DOAH). The fiscal impact of parties requesting hearings at DOAH is difficult to gauge without knowing the volume of cases that will be transferred. However, assuming a necessary computer upgrade and the establishment of one staff assistant position, DOAH has estimated its first-year, non-recurring costs at $81,907 and its annual recurring costs at $59,467. These funds would be transferred from the commission's trust fund to that of DOAH.

2. Recurring or Annualized Continuation Effects:

   Recurring or annualized continuation effects will vary with the number of cases referred to DOAH. The DOAH has forecast its recurring expenses associated with receiving proceedings from the commission to be $59,467, assuming the establishment of one staff assistant position, increased computer costs, and increased travel expenses for hearing officers.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Appropriations Consequences:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

   None

2. Recurring or Annualized Continuation Effects:

   None

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   The majority of changes proposed should have little or no
economic cost to the private sector.

2. Direct Private Sector Benefits:

The majority of changes proposed should provide little or no economic benefits to the private sector.

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

Effects on competition and the private sector should be negligible.

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

The long range consequences of this bill should be to lower utility rates, or their rate of growth, by more closely ensuring that only current, reasonable and necessary expenses are included. To the extent that utilities may have their return on equity reduced for failure to meet prescribed water quality standards, customers should benefit by a greater expectation of receiving water that meets such standards.

IV. COMMENTS:

To the extent that the proposed changes result in lower, fairer rates for higher quality service, the goal of helping to "insure our growth and continuing quality of life through dependable, affordable, and fair systems of utilities, telecommunications, and water and sewer management" will be assisted.

V. AMENDMENTS:

None.

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:
Prepared by:
Michael B. Twomey

SECOND COMMITTEE OF REFERENCE:
Prepared by:

APPROPRIATIONS:
Prepared by:

Staff Director:

Staff Director:
I. SUMMARY:

A. PRESENT SITUATION:

Chapter 367, Florida Statutes, provides the Florida Public Service Commission (commission) with rate setting jurisdiction over certain investor-owned water and sewer utilities, not otherwise exempt, in counties that either have opted for commission regulation or have had such regulation imposed by the Legislature. Once under the jurisdiction of the commission, a county must remain so for four continuous years before it may opt out of commission regulation. Currently, 33 of the 67 counties are subject to the commission's Chapter 367 jurisdiction. Investor-owned water and sewer utilities in so-called non-jurisdictional counties are regulated by the governing body of each county.

Section 367.171(6), F.S. requires that counties whose utilities were regulated by the commission on or after January 1, 1980, which subsequently ceased to be so regulated, must adopt and follow as minimum standards of regulation the provisions of Section 367.081, F.S. (Rates; procedure for fixing and changing) with some exceptions. Regulated utilities are essentially all persons operating a system, who provide water or sewer service to the public for compensation and are not exempted. Exemptions are listed in Section 367.022, F.S., and include bottled water services, governmental systems, manufacturers providing themselves with service, public lodging establishments providing service to their guests, landlords providing service to their tenants without specific compensation for the service, systems serving 100 or fewer persons, organizations providing service only to their members who own and control the organizations, and persons reselling water or sewer service at a cost not exceeding the actual purchase price.

Water and sewer utilities, like telephone companies, but unlike
electric and natural gas utilities, must obtain a certificate from the commission authorizing them to serve a particular geographic area prior to receiving a construction permit from the Department of Environmental Regulation. Permission to expand or delete territory from the certificated service area must be obtained from the commission prior to doing so. Utilities must also receive prior commission approval to sell, assign or transfer a certificate or any portion of their facilities. Water and sewer rates are set by the commission and interim rate relief may be had. Chapter 367, Florida Statutes, prohibits abandonment of water and sewer systems without giving notice of intent to do so and provides penalties.

The chapter will be repealed on October 1, 1989, unless reenacted by the Legislature.

B. EFFECT OF PROPOSED CHANGES:

This bill saves Chapter 367, Florida Statutes, from repeal and modifies the law as described in the section-by-section analysis.

C. SECTION-BY-SECTION ANALYSIS:

Section 1

Subsection 367.011(1), Florida Statutes, is amended to change the chapter citation to the "Water and Wastewater System Regulatory Law."

Section 2

Subsection 367.021(2), Florida Statutes, is amended to modify the definition of a "certificate of authorization".

Subsection 367.021(3), Florida Statutes, is amended to clarify the definition of "utility."

Subsection 367.021(4), Florida Statutes, is amended to clarify the definition of "system."

Subsection 367.021(5), Florida Statutes, is amended to replace the "governmental agency" with "governmental authority."

Subsection 367.021(9), Florida Statutes, is created to provide a definition for "wastewater."

Subsection 367.021(10), Florida Statutes, is created to provide a definition for "domestic wastewater."

Subsection 367.021(11), Florida Statutes, is created to provide a definition for "industrial wastewater."

Subsection 367.021(12), Florida Statutes, is created to provide a definition for "effluent reuse."

Subsection 367.021(13), Florida Statutes, is created to provide a
definition for "contributions-in-aid-of-construction (CIAC)."

Subsection 367.021(14), Florida Statutes, is created to provide a definition for "last day of notice."

Subsection 367.021(15), Florida Statutes, is created to provide a definition for "service area".

Section 3

Subsection 367.022(7), Florida Statutes, is amended for technical purposes.

Subsection 367.022(8), Florida Statutes, is amended to incorporate the new definition of "wastewater."

Subsection 367.022(9), Florida Statutes, is created to provide an exemption from regulation for "wastewater treatment plants operated exclusively for disposing of industrial wastewater."

Section 4

Subsection 367.031, Florida Statutes, is amended to require utilities to obtain a commission certificate prior to obtaining a consumptive use permit from a water management district. It requires the commission to grant or deny a request for a certificate within 90 days from the official date of a completed filing provided a timely objection is not filed, and for technical purposes.

Section 5

Section 367.045, Florida Statutes, is created to consolidate the provisions previously located in sections 367.041, 367.051, 367.055, and 367.061, Florida Statutes, and for technical purposes.

Section 6

Subsection 367.071(1), Florida Statutes, is amended for technical reasons.

Subsection 367.071(2), Florida Statutes, is created to provide that transfer of a certificate prior to either commission approval or notice of intent may subject the transferor to a penalty. Further, the transferor shall remain liable for assessment fees, fines and refunds of the utility.

Subsection 367.071(3), Florida Statutes, is amended for technical reasons.

Subsection 367.071(4), Florida Statutes, is amended to provide that any pending rate relief by a utility before the commission at the time of the transfer or sale of a utility to a governmental authority shall be deemed withdrawn.
Subsection 367.071(5), Florida Statutes, is amended for technical reasons.

Subsection 367.071(6), Florida Statutes, is created to provide that any person who obtains ownership or control over any utility system or part thereof through foreclosure of a mortgage or other encumbrance shall have the obligation to continue providing service in the stead of the certificate holder and may not remove or dismantle any part of the system.

Section 7

Subsection 367.081(1), Florida Statutes, is amended to state that a utility shall only charge rates and charges that have been approved by the commission.

Subsection 367.081(2), Florida Statutes, is amended to require that the commission, in setting rates, shall consider land acquired or property constructed or to be constructed in the public interest within a reasonable time in the future, not to exceed 24 months, from the end of the historical test period used to set final rates. Further, the commission is authorized, when establishing a utility's initial rates to consider data to a time when the utility is expected to be operating at a reasonable level of capacity such that economies of scale may be achieved.

Subsection 367.081(4), Florida Statutes, is amended to provide that a utility shall not use the price increase or decrease index rate setting methodology during the pendency of a rate case or between the official filing date for such a case and one year thereafter. Further, the time period for providing notice of an automatic index increase is increased from 30 to 45 days. Reporting requirements previously referring to rate of return are changed to refer to rate of return on equity and the requirement that refunds be paid with interest is added.

Subsection 367.081(6), Florida Statutes, is amended to provide that new rates, subject to refund, may be placed into effect under escrow, in addition to bond or corporate undertaking.

Subsection 367.081(7), Florida Statutes, is created to provide that a utility may specifically request that the commission process a rate request using the commission's Proposed Agency Action Procedure. The commission is required to enter its vote on the procedure within 5 months of the official filing date if the application is not opposed and within 8 months of the date a protest is filed against such a requested case.

Subsection 367.081(8), Florida Statutes, is created to require the commission to ensure that the rates and charges of all utilities reflect current federal and state corporate income tax rates by January 1, 1990.

Section 8
Section 367.0811, Florida Statutes, is created to provide procedures for obtaining commission staff assistance for the purpose of changing a utility's rates and charges.

Section 9

Subsection 367.082(2), Florida Statutes, is amended to provide that interim rates may be collected under escrow and letter of credit as well as under bond.

Subsection 367.082(7), Florida Statutes, is created to provide that if a utility becomes exempt from commission jurisdiction during the pendency of a rate case, the rate relief shall be deemed withdrawn and interim rates, if any, shall be discontinued and refunded with interest.

Section 10

Subsection 367.083, Florida Statutes, is amended to expand the time period the commission must rule on the acceptability of a utility's minimum filing requirements from 15 to 20 days.

Section 11

Section 367.084, Florida Statutes, is created to provide procedures relating to the commission's rate adjustment orders, the manner in which they are issued and distributed, and the time for appeals therefrom.

Section 12

Subsection 367.091(1), Florida Statutes, is created to require that all applications for rate changes must be in writing.

Subsection 367.091(2), Florida Statutes, is created to require that a utility's rates and charges must be in a tariff approved by the commission.

Subsection 367.091(3), Florida Statutes, is created to state that a utility may only charge rates approved by the commission for a particular class of service.

Subsection 367.091(5), Florida Statutes, is created to require that certain applications for rate increase must be accompanied by cost justifications.

Section 13

Section 367.101, Florida Statutes, is amended for clarity.

Section 14

Subsection 367.111(2), Florida Statutes, is amended to provide that the commission may reduce a utility's return on equity if it finds that the utility has failed to provide its customers with water that meets the standards promulgated by the Department of
Environmental Regulation.

Section 15

Subsection 367.121(3), Florida Statutes, is created to require that the commission chairman shall, upon the petition of one or more of the parties to a proceeding, refer such proceeding to the Division of Administrative Hearings.

Section 16

Section 367.151(1), Florida Statutes, is amended to provide that utilities shall pay regulatory assessment fees in accordance with a new schedule contained in this section, notwithstanding the existence of a regulatory assessment fee schedule in Chapter 350, Florida Statutes.

Subsection 367.151(2), Florida Statutes, is created to provide that the regulatory assessment fee shall be no more than 4.5 percent of gross revenues derived from intrastate business, that the fee shall be paid annually as part of the annual financial report required by the commission, and that penalties may be assessed for failure to timely pay assessment fees.

Section 17

Subsection 367.156(1), Florida Statutes, is amended to provide that the commission shall have access to the records of utility affiliates containing information which affects the utility's rates or cost of service and to make clear that exemptions for proprietary confidential business information are subject to the Open Government Sunset Act.

Subsection 367.156(2), Florida Statutes, is created to clarify what type of discovery information is deemed relevant and to provide for the protection of confidential materials.

Subsection 367.156(3), Florida Statutes, is created to provide for the issuance of protective orders for proprietary confidential business information.

Subsection 367.156(4), Florida Statutes, is amended to more strictly limit the type of information the commission may find to be proprietary confidential business information and to expand the statutory definition to include certain information of affiliated companies.

Subsection 367.156(5), Florida Statutes, is created to limit commission protection of information found to be proprietary confidential business information to 18 months unless extensions are granted.

Section 18

Section 367.161, Florida Statutes, is amended for technical reasons.
Section 19

Section 367.165, Florida Statutes, is amended for technical reasons.

Section 20

Subsection 367.171(1), Florida Statutes, is amended to provide that counties opting for commission regulation shall remain under that jurisdiction for 10 years, as opposed to the current 4 years.

Subsection 367.171(3), Florida Statutes, is amended to reflect the counties currently under commission jurisdiction, and to require that non-jurisdictional counties regulate their utilities pursuant to Section 367.081, Florida Statutes.

Subsection 367.171(7), Florida Statutes, is created to provide that the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or not.

Section 21

Section 367.182, Florida Statutes, is amended to clarify the savings clause.

Section 22

Sections 367.041, 367.051, 367.055, and 367.061, Florida Statutes are repealed.

Section 23

This section saves Chapter 367, Florida Statutes, from Sunset repeal.

Section 24

This section provides for future repeal and review by the Legislature of Chapter 367, Florida Statutes.

Section 25

This section provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

The proposed changes, if enacted, will have variable non-recurring or first year start-up effects on state agencies
depending primarily on the number of proceedings referred to the Division of Administrative Hearings (DOAH). The fiscal impact of parties requesting hearings at DOAH is difficult to gauge without knowing the volume of cases that will be transferred. However, assuming a necessary computer upgrade and the establishment of one staff assistant position, DOAH has estimated its first-year, non-recurring costs at $81,907 and its annual recurring costs at $59,467. These funds would be transferred from the commission's trust fund to that of DOAH.

2. Recurring or Annualized Continuation Effects:

Recurring or annualized continuation effects will vary with the number of cases referred to DOAH. The DOAH has forecast its recurring expenses associated with receiving proceedings from the commission to be $59,467, assuming the establishment of one staff assistant position, increased computer costs, and increased travel expenses for hearing officers.

3. Long Run Effects Other Than Normal Growth:
None.

4. Appropriations Consequences:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
None

2. Recurring or Annualized Continuation Effects:
None

3. Long Run Effects Other Than Normal Growth:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
The majority of changes proposed should have little or no economic cost to the private sector.

2. Direct Private Sector Benefits:
The majority of changes proposed should provide little or no economic benefits to the private sector.
3. Effects on Competition, Private Enterprise, and Employment Markets:

Effects on competition and the private sector should be negligible.

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

The long range consequences of this bill should be to lower utility rates, or their rate of growth, by more closely ensuring that only current, reasonable and necessary expenses are included. To the extent that utilities may have their return on equity reduced for failure to meet prescribed water quality standards, customers should benefit by a greater expectation of receiving water that meets such standards.

IV. COMMENTS:

To the extent that the proposed changes result in lower, fairer rates for higher quality service, the goal of helping to "insure our growth and continuing quality of life through dependable, affordable, and fair systems of utilities, telecommunications, and water and sewer management" will be assisted.

V. AMENDMENTS:

None.

VI. SIGNATURES:

Substantive Committee:
Prepared by: Michael B. Twomey

Second Committee of Reference:
Prepared by:

Appropriations:
Prepared by:
I. SUMMARY:

A. Present Situation:

The Regulatory Sunset Act repeals chapter 367, Florida Statutes, relating to the regulation of water and sewer systems, on October 1, 1989, unless the Legislature revives and readopts it as being in the public interest. The chapter requires a utility to obtain a certificate of authorization in order to provide water or sewer service in counties under the jurisdiction of the Public Service Commission (PSC).

The chapter provides a method by which county commissions may choose to regulate water and sewer systems or delegate regulation to the PSC through passage of a resolution or county ordinance. Currently, 33 of the 67 county commissions have delegated regulatory responsibility for investor-owned water and sewer systems to the PSC. County commissions which delegate regulation to the PSC must remain under the PSC's jurisdiction for four continuous years. After four years the county commission may remove itself from PSC jurisdiction through passage of a resolution or county ordinance.

The chapter requires utilities to pay application fees and a regulatory assessment fee in the form of a gross receipts tax. The 2.5% regulatory assessment fee paid by water and sewer utilities is the highest paid by any PSC regulated industry. Nevertheless, the cost of regulating the water and sewer industry has been, in recent years, subsidized by the electric and telecommunication industries. Water and sewer regulation has operated in a deficit for the past five fiscal years, which is expected to continue.

The chapter provides exemptions to the act, definitions, and procedures that utilities must follow in order to increase rates, to add or delete service area and, to assign or transfer a utility. The chapter also provides for the exemption of water and sewer utility records from the Public Records Act.

B. Effect of Proposed Changes:

The committee substitute increases the statutory cap for application and regulatory assessment fees paid by water and sewer systems in order to cover the cost of water and sewer regulation. The statutory cap for application fees is increased from $2,250 to $4,500. The statutory cap for regulatory assessment fees is increased from 2.5% to 4.5% of a water and sewer utility's gross revenues derived from intrastate business. The committee substitute also contains provisions which prohibit the subsidization of water and sewer regulation by funds collected from other PSC regulated industries effective January 1, 1991.
The committee substitute provides a definition for proprietary, confidential business information, and establishes limits on how long public utility records can be exempt from the Public Records Act. The committee substitute also provides for the discovery of all relevant information, as well as the issuance of protective orders by the PSC when utility records are designated as proprietary confidential business information. In addition, the committee substitute contains provisions which authorize the commission to require necessary reports from utilities and their affiliated companies in order to ensure that a utility's ratepayers do not subsidize non-utility activities.

The committee substitute grants the PSC the authority to deny a certificate of authorization to any new Class C sewer system if the public can be adequately served by modifying or extending an existing system. This is because class C sewer systems create serious regulatory problems, such as abandonment, for the PSC that are not encountered with larger systems.

The committee substitute replaces sections 367.041, F.S., 367.051, F.S., 367.055, F.S., and 367.061, F.S., which govern the manner in which a water and sewer utility applies for, obtains, and subsequently amends its certificate of authorization. The creation of new application and amendment procedures in the bill should update and improve the efficiency of the certification process.

The committee substitute amends s. 367.171, F.S., by requiring that counties remain under the jurisdiction of the PSC for ten years. The section is also amended to authorize the PSC to require that a utility apply for an original certificate of authorization if it fails to register with the commission within 30 days of the chapter becoming applicable to a county. The committee substitute also provides for any proceedings pending before the PSC prior to the effective date of this act to be disposed of in accordance with the law in effect at the time the proceeding was initiated.

The committee substitute also contains a number of technical changes which include: creating new definitions used in the act; creating procedures to be used when a utility requests commission staff assistance in order to change its rate or charges; conforming terminology used throughout the chapter; and revising cross references.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Presently, the chapter and PSC rules establish regulatory assessment fees that utilities must pay biannually. The chapter and PSC rules also establish application fees that a utility is required to pay whenever it applies for an original certificate, an amended certificate, a rate increase, or seeks commission approval to implement charges for service availability. If chapter 367, F.S., is allowed to repeal on October 1, 1989, as provided by s. 11.61, F.S., utilities would no longer be required to pay those fees. However, the committee substitute revives and readopts the chapter, which will result in utilities continuing to pay the fees after October 1, 1989.

The creation of statutory procedures to be used when a utility requests staff assistance in order to change its rate or charges should decrease the total costs of processing a request for increased rates. This should benefit the public by helping minimize rate increases.

The changes to the manner in which the meter test fee is paid by current customers benefits the public by providing for
payment of the fee with their next regularly scheduled statement.

Granting the PSC the authority to increase the regulatory assessment and application fees will enable the commission to recover the projected FY 88-89 deficit of $2,294,336. This will result in increased costs for regulated water and sewer utilities. These costs will be passed on to the public in the form of higher costs for water and sewer service.

B. Government:

During fiscal years 1987-88, the PSC collected revenues of $3,332,030 from water and sewer utilities. The cost of administering the chapter by the PSC in fiscal year 1987-88 was $5,171,919, resulting in a net deficit of $1,839,889.

According to the PSC, increasing the statutory cap for application fees to $4,500 and regulatory assessment fees to 4.5% will produce revenues of $6,670,755 which should recover the present operating deficit. If the act is repealed, these costs would no longer be incurred by state government after October 1, 1989. This committee substitute reenacts Chapter 367, F.S., and would cause these state costs to continue after October 1, 1989.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.
The bill originally contained separate provisions regarding the extension of a utility's certificate of authorization, and required utilities to provide the first meter test to current customers or users free of charge. The committee substitute deletes these provisions and adds provisions which were not included in the original bill. The committee substitute amends s. 367.171, F.S., to require that counties remain under the jurisdiction of the PSC for ten years. The section is also amended to authorize the PSC to require that a utility apply for an original certificate of authorization if it fails to register with the commission within 30 days of the chapters becoming applicable to a county.

The committee substitute prohibits, after January 1, 1991, the subsidization of water and sewer regulation by funds collected from other PSC regulated industries. In order to insure that a utility's ratepayers are not subsidizing non-utility activities, the committee substitute contains provisions which authorize the commission to require necessary reports from utilities and their affiliated companies. The committee substitute also provides for any proceedings pending before the PSC prior to the effective date of this act to be disposed of in accordance with the law in effect at the time the proceeding was initiated. In addition, the committee substitute contains numerous technical changes which conform terminology used throughout the chapter, and revises various cross-references.
A Review of

Chapter 367, Florida Statutes
Relating to Water and Sewer Systems

By Staff of
The Senate Economic, Professional and Utility Regulation Committee

March, 1989
A Review of Chapter 367, Florida Statutes
Relating to Water and Sewer Systems

Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Introduction</td>
<td></td>
</tr>
<tr>
<td>II. Summary</td>
<td></td>
</tr>
<tr>
<td>III. Legislative History</td>
<td></td>
</tr>
<tr>
<td>IV. Current Method of Regulation</td>
<td></td>
</tr>
<tr>
<td>A. An Overview</td>
<td>7</td>
</tr>
<tr>
<td>B. The Rate Setting Process</td>
<td>13</td>
</tr>
<tr>
<td>C. Procedures Used in the Rate Setting Process</td>
<td>14</td>
</tr>
<tr>
<td>V. Cost and Benefits of Regulation</td>
<td></td>
</tr>
<tr>
<td>A. The Industry</td>
<td>20</td>
</tr>
<tr>
<td>1. Cost</td>
<td>20</td>
</tr>
<tr>
<td>2. Benefits</td>
<td>21</td>
</tr>
<tr>
<td>B. The Public</td>
<td>22</td>
</tr>
<tr>
<td>1. Cost</td>
<td>22</td>
</tr>
<tr>
<td>2. Benefits</td>
<td>22</td>
</tr>
<tr>
<td>VI. Sunset Criteria</td>
<td>23</td>
</tr>
<tr>
<td>VII. Issues, Conclusions and Recommendations Regarding the Current Regulatory Scheme</td>
<td></td>
</tr>
<tr>
<td>1. Should it be the policy of the state to grant the Public Service Commission statewide jurisdiction over water and sewer systems?</td>
<td>27</td>
</tr>
<tr>
<td>2. Can the efficiency of the Public Service Commission be improved by having contested water and sewer cases referred to the Division of Administrative Hearings, Department of Administration?</td>
<td>32</td>
</tr>
<tr>
<td>3. Should the Public Service Commission's statutory exemption to the Public Records Act be continued? If so, are modifications appropriate?</td>
<td>37</td>
</tr>
<tr>
<td>4. Should the PSC's cost of regulating the water and sewer industry be borne by the regulated water and sewer systems?</td>
<td>49</td>
</tr>
</tbody>
</table>
5. Should policy changes be enacted which will reduce the demand for and number of small sewer systems? .................. 50

6. Should the Public Service Commission require water and sewer systems to collect a minimum level of CIAC as a means of achieving and sustaining reasonable rates? .................. 55

7. What should state policy be when a non-PSC regulated water and sewer system encroaches upon the service area of a PSC regulated system? .................. 59

8. Is the process by which water and sewer utilities apply for, obtain, and subsequently amend their certificates of authorization as efficient as it could be? .................. 63

9. Is Chapter 367, F.S., in need of additional technical changes? .................. 64

VIII. Appendix A -- Chapter 367, Florida Statutes .................. 65
I. INTRODUCTION

The Regulatory Sunset Act, section 11.61, F.S., provides for a systematic repeal of those statutes which regulate certain professions, occupations, businesses, and industries. Each year several statutes are scheduled for repeal unless revised or reenacted by the Legislature following an orderly review process. This review concerns Chapter 367, F.S., which provides for state regulation of water and sewer systems. This chapter will automatically repeal on October 1, 1989, unless reenacted.

The Regulatory Sunset Act sets forth specific criteria for the review of state statutes scheduled for repeal. The criteria require that a determination be made as to whether the law relating to water and sewer systems is a legitimate exercise of the state's police power. Therefore, the primary question considered in this review is:

Does the law relating to water and sewer systems protect the public from serious potential harm to such an extent that if Chapter 367, Florida Statutes, is not reenacted, the public's health, safety, or welfare would be threatened?

If the answer is no, then staff must recommend that the sections be allowed to repeal. If the answer is yes, then the sections must be evaluated to determine whether they are tailored
to address the potential for serious public harm at the least possible cost.

This review provides an examination of Chapter 367, F.S., its history and operation. Lengthy quotations from the statutes were avoided since they are provided in Appendix A. The cost and benefits of the law are presented, along with conclusions and recommendations. The information in this review is a product of staff research and contacts with staff of the Public Service Commission and industry representatives.
II. **SUMMARY**

This review addresses, pursuant to sunset review requirements, the question of whether the Legislature should reenact, revise, or repeal Chapter 367, Florida Statutes, relating to the regulation of water and sewer systems. The report summarizes the Legislature history of the chapter and contains an overview of both the water and sewer industry and the current regulatory scheme. The report also contains an evaluation of the regulatory scheme for water and sewer systems as required by criteria in the Sunset Act. Alternatives to the present method of regulation and staff recommendations are also discussed. Staff recommendations adopted in this report include:

- Expanding the PSC’s jurisdiction for water and sewer systems statewide;

- increasing the application and regulatory assessment fees paid by water and sewer systems in order to cover the cost of water and sewer regulation;

- adopting a policy, within Chapter 367, F.S., to require regulated water and sewer systems to pay the cost of their regulation by the state. The policy would also prohibit the subsidization of water and sewer regulation by funds collected from other PSC regulated industries;
o modifying the certification process to update and improve its efficiency;

o granting the PSC the authority to deny a certificate of authorization to any new class C sewer system if the public can be adequately served by modifying or extending an existing system;

o encouraging the PSC to test the benefits of regionalization;

o not adopting the statutory changes proposed by the PSC regarding the encroachment of a non-PSC regulated water and sewer system upon the service area of PSC-regulated water and sewer system;

o having the PSC review and revise its present CIAC policy;

o continuing, with modifications, the PSC's exemption to the public records act; and

o not requiring the PSC to refer contested water and sewer cases to the Division of Administrative Hearings, Department of Administration.
III. LEGISLATIVE HISTORY

Water and sewer systems were first regulated by the Public Service Commission in 1959 with enactment of Chapter 59-372, Laws of Florida. The act created Chapter 367, F.S., and provided a method by which county governments could, at their discretion, delegate their regulatory authority to the Public Service Commission. Prior to 1959, water and sewer systems were regulated by the county and municipal governments. In 1971, the forerunner of the current Chapter 367, F.S., was created by enactment of Chapter 71-278, Laws of Florida. The act amended the existing Chapter 367, F.S., by providing that a utility could earn a rate of return based upon its actual investment in property that was used and useful.

The Legislature has enacted substantial changes to Chapter 367, F.S., only during the 1980, 1982 and 1984 legislative sessions. Chapter 80-99, L.O.F., revised and readopted Chapter 367, F.S., pursuant to sunset review. The act modified the process in which water and sewer utilities apply for, obtain, and subsequently amend their certificates of authorization; modified the manner in which rates are fixed and changed; and provided for index, pass-through and interim rate increases. The act also increased the application fee caps; authorized the PSC, by rule, to assess a fee and set standards for service availability.
charges; and provided for the boards of county commissioners to rescind previously made jurisdictional resolutions.

Chapter 82-25, L.O.F., authorized the use of a PSC established range of rates of return in water and sewer rate case proceedings. The act also modified the procedure for setting interim rates subject to refund, and provided for PSC access to utility records. To ensure the confidentiality of utility records, the Legislature exempted these records from the open government provisions of Chapter 119, F.S.

Enactment of Chapter 84-149, L.O.F., prohibited water and sewer utilities from increasing their rates under certain circumstances, and provided that combined or simultaneously filed index and pass-through rate increase applications by utilities are one rate adjustment. The act also authorized the Public Service Commission to order refunds to customers with interest, and provided for fees to be paid by utilities when they file applications to delete portions of their service territory.
IV. CURRENT METHOD OF REGULATION

A. An Overview

The water and sewer industry differs substantially from the electric, gas and telephone industries because it has the smallest revenues. The revenues earned by the water and sewer industry are smaller than those earned by other industries because there are more water and sewer systems serving fewer customers. According to the PSC, there are approximately 60,000 community water and sewer systems in the United States serving approximately 200 million customers. Of the 200 million, approximately 50 million customers are served by investor-owned water and sewer utilities. Approximately 87% of the 60,000 water and sewer systems serve 3,300 customers or less.

In Florida, water and sewer utilities that are regulated by the PSC are also subject to regulation by three state agencies. These state agencies include: The Department of Environmental Regulation (DER); the Water Management Districts (WMD); and the Department of Health and Rehabilitative Services (HRS).

The DER is responsible for approving the design of water and sewer treatment plants, and the chemical composition of water and sewage after it has been treated. The WMD is responsible for the purity and supply of ground water. The HRS has regulatory authority over all private water systems, all public systems not
meeting the criteria for DER regulation, and all water and sewer systems with fewer than 15 connections or which serve less than 25 individuals. In addition, the DER may delegate the responsibility for issuing water facility constructions permits to qualified HRS County Health units.

The primary role of the PSC is to regulate the rates that water and sewer utilities charge their customers. The PSC is responsible for: establishing and changing water and sewer utility rates; authorizing the specific territory that a water and sewer utility may serve; monitoring the earnings of the utilities to ensure that they do not exceed authorized ranges; conducting on-going evaluations of a utility's service quality to determine if it complies with state governmental standards; and to monitor a utility's approved rates, charges and conditions for service.

At present, the PSC is responsible for the economic regulation of approximately 791 water and sewer systems operated by 537 water and sewer utilities (see Table 1 for a breakdown of the industry by class and type). Before a utility can begin operating a water or sewer system it must obtain a certificate of authorization from the PSC. The certificate grants a utility the exclusive right to operate in a specific service territory until revoked or otherwise amended by the PSC.

The utility must also obtain a construction permit from the DER and a consumptive use or drilling permit from the WMD. A
utility may file simultaneous applications with all three agencies but cannot receive a construction or drilling permit until granted a certificate by the PSC.

### TABLE 1

<table>
<thead>
<tr>
<th></th>
<th>Water</th>
<th>Sewer</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A</td>
<td>24</td>
<td>23</td>
<td>47</td>
</tr>
<tr>
<td>Class B</td>
<td>78</td>
<td>87</td>
<td>165</td>
</tr>
<tr>
<td>Class C</td>
<td>312</td>
<td>267</td>
<td>579</td>
</tr>
<tr>
<td>TOTAL</td>
<td>414</td>
<td>377</td>
<td>791</td>
</tr>
</tbody>
</table>

* Class A utilities are defined as utilities with gross revenues of $750,000 and over.

* Class B utilities are defined as utilities with gross revenues of $150,000 but less than $750,000.

* Class C utilities are defined as utilities with gross revenues of $150,000 or less.

* According to section 25-30.110(4)(c), F.A.C.

Although 45 states regulate the water and sewer industry, Florida is the only state in which the jurisdiction of its public service commission is determined by county commissions. A county commission may choose to regulate water and sewer systems or delegate regulation to the PSC through passage of a resolution or county ordinance. Currently, 33 of the 67 county governments have delegated regulatory responsibility for investor-owned water and sewer systems to the PSC (see Table 2). County governments
which delegate regulation to the PSC must remain under the PSC's jurisdiction for four continuous years. After four years, the county may remove itself from PSC jurisdiction through passage of a resolution or county ordinance.

TABLE 2

COUNTIES REGULATED BY THE PUBLIC SERVICE COMMISSION

<table>
<thead>
<tr>
<th>County</th>
<th>Effective Date of Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Bay</td>
<td>July 10, 1973</td>
</tr>
<tr>
<td>2. Brevard</td>
<td>January 19, 1961</td>
</tr>
<tr>
<td>3. Broward</td>
<td>September 25, 1959</td>
</tr>
<tr>
<td>4. Citrus</td>
<td>December 18, 1973</td>
</tr>
<tr>
<td>5. Clay</td>
<td>May 8, 1967</td>
</tr>
<tr>
<td>6. Collier</td>
<td>April 16, 1985</td>
</tr>
<tr>
<td>7. Columbia</td>
<td>May 21, 1981</td>
</tr>
<tr>
<td>8. Desoto</td>
<td>August 14, 1984</td>
</tr>
<tr>
<td></td>
<td>(2nd) April 1, 1974</td>
</tr>
<tr>
<td>10. Flagler</td>
<td>July 1, 1980 (statute)</td>
</tr>
<tr>
<td>11. Franklin</td>
<td>August 20, 1964</td>
</tr>
<tr>
<td>13. Hernando</td>
<td>August 4, 1969</td>
</tr>
<tr>
<td>14. Highlands</td>
<td>September 7, 1982</td>
</tr>
<tr>
<td>15. Jackson</td>
<td>June 8, 1971</td>
</tr>
<tr>
<td>16. Lake</td>
<td>June 13, 1972</td>
</tr>
<tr>
<td>17. Lee</td>
<td>February 18, 1970</td>
</tr>
<tr>
<td>18. Levy</td>
<td>January 4, 1983</td>
</tr>
<tr>
<td>19. Marion</td>
<td>May 5, 1981</td>
</tr>
<tr>
<td>20. Martin</td>
<td>(1st) September 9, 1975</td>
</tr>
<tr>
<td></td>
<td>(2nd) September 23, 1980</td>
</tr>
<tr>
<td></td>
<td>(2nd) July 27, 1984</td>
</tr>
<tr>
<td>22. Nassau</td>
<td>November 17, 1964</td>
</tr>
<tr>
<td>23. Orange</td>
<td>May 1, 1961</td>
</tr>
<tr>
<td>24. Osceola</td>
<td>October 12, 1959</td>
</tr>
<tr>
<td>25. Palm Beach</td>
<td>July 13, 1959</td>
</tr>
<tr>
<td>26. Pasco</td>
<td>July 11, 1972</td>
</tr>
<tr>
<td>27. Pinellas</td>
<td>August 13, 1965</td>
</tr>
<tr>
<td>28. Putnam</td>
<td>June 28, 1966</td>
</tr>
<tr>
<td>29. Seminole</td>
<td>(1st) August 11, 1959</td>
</tr>
<tr>
<td></td>
<td>(2nd) September 23, 1975</td>
</tr>
<tr>
<td>31. Sumter</td>
<td>January 15, 1987</td>
</tr>
<tr>
<td>32. Volusia</td>
<td>September 3, 1959</td>
</tr>
<tr>
<td>33. Washington</td>
<td>October 16, 1986</td>
</tr>
</tbody>
</table>
Even in the 33 counties which have delegated regulation to the PSC, not all water and sewer operations fall under the jurisdiction of the PSC. These exempt operations include:

- The sale or distribution of bottled water;
- Systems owned, operated, managed, or controlled by governmental agencies;
- Manufacturers providing service solely in conjunction with their operations;
- Public lodging;
- Landlords providing services to their tenants;
- Systems with the capacity to serve less than 100 persons;
- Nonprofit corporations, associations, or cooperatives providing service solely to their members/owners; and
- Anyone reselling services at cost, if they file their charges with the PSC.

Further differences between the regulation of the water and sewer industry and the electric, gas, and telephone industries is in the gross receipts tax and application fees paid by the utilities. At present, the 2.5% gross receipts tax paid by water and sewer utilities is the highest paid by any PSC regulated industry. Water and sewer utilities also pay application fees that the other utilities do not pay whenever they apply for, or subsequently amend, their certificates of authorization. Nevertheless, the cost of regulating the water and sewer industry
has not been completely borne by the regulated water and sewer utilities.

Regulation of the water and sewer industry has been, in recent years, subsidized by the electric and telecommunication industries. Water and sewer regulation has operated in a deficit for the past five fiscal years and is projected to be in a deficit for the next two fiscal years (see Table 3).

**TABLE 3**

<table>
<thead>
<tr>
<th>FISCAL YEAR</th>
<th>Expenditures</th>
<th>Revenues</th>
<th>Total Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983-84</td>
<td>$2,959,389</td>
<td>2,167,930</td>
<td>$ 791,459</td>
</tr>
<tr>
<td>1984-85</td>
<td>$3,135,207</td>
<td>2,511,117</td>
<td>$ 624,090</td>
</tr>
<tr>
<td>1985-86</td>
<td>$3,466,912</td>
<td>2,882,034</td>
<td>$ 584,878</td>
</tr>
<tr>
<td>1986-87</td>
<td>$4,426,397</td>
<td>3,325,461</td>
<td>1,100,936</td>
</tr>
<tr>
<td>1987-88</td>
<td>$5,171,919</td>
<td>3,332,030</td>
<td>1,839,889</td>
</tr>
<tr>
<td>1988-89*</td>
<td>$5,766,942</td>
<td>3,472,607</td>
<td>2,294,335</td>
</tr>
<tr>
<td>1989-90*</td>
<td>$6,090,852</td>
<td>3,660,662</td>
<td>2,430,190</td>
</tr>
<tr>
<td>1990-91*</td>
<td>$6,206,891</td>
<td>3,847,372</td>
<td>2,359,519</td>
</tr>
</tbody>
</table>

* PSC estimates for FY 88-89 through 90-91 have not been verified by legislative staff.

The total expenditures includes the 6% general revenue surcharge.
B. The Rate Setting Process

The PSC is charged with setting just, reasonable, compensatory, and not unfairly discriminatory rates. The PSC utilizes the "rate base" concept in regulating the water and sewer systems under its jurisdiction. This concept establishes the revenue requirement that a utility needs in order to operate. Once this requirement is determined, the PSC will approve a rate structure, and rates, which will allow the utility to earn this amount of revenue. Such action by the PSC does not guarantee that the utility will, in fact, earn that amount. It only provides the utility with the opportunity to do so.

In its simplest form, the determination of a water and sewer utility's revenue requirement can be reduced to the following equation:

\[ R = (B-D)r + o \]

- \( R \) = revenue requirement
- \( B \) = rate base
- \( D \) = depreciation
- \( r \) = rate of return
- \( o \) = operating expense

A water and sewer utility's rate base is its investment in plant and equipment which is classified as being used and useful in providing service to the public. Depreciation must be subtracted from this amount to obtain the actual value of the property.
A water and sewer utility is entitled to earn a fair rate of return on its rate base investment. This is expressed as a percentage. A utility's rate of return must be fair to investors so that it does not result in confiscation of the utility. At the same time, it should preserve the credit standing of the utility so that it can attract new capital.

Operating expenses include the expenses incurred in operating the utility plus annual charges for depreciation and operating taxes. Only those expenses which the PSC determines to be reasonable and prudent are included.

C. Procedures Used in the Rate Setting Process

A water and sewer utility may change its rates by filing an application for a conventional rate case, an index, a pass-through or a limited rate case proceeding. The index and pass-through procedures are not available to the electric, gas and telephone utilities. These procedures were designed to help small water and sewer utilities keep up with increased operating costs caused by inflation, lengthen the time between rate cases, and ultimately reduce the cost of conventional rate cases.

In a conventional rate case, a water and sewer utility applies for a rate increase and submits documentation, in the form of minimum filing requirements, to the PSC to justify the increase. PSC staff review the documents submitted by the utility and determine if additional information needs to be obtained through the discovery process. The PSC has 60 days from
the date of filing during which it must suspend the requested rates if it desires further review of the request. At that time, the PSC may grant a utility's request for interim rates. If the requested rates are not suspended by the PSC within 60 days, they go into effect without further commission action.

In controversial rate cases, the Chairman of the PSC immediately sets the case for a hearing and assigns it to a panel of two commissioners. The two commissioners hear the case and make a final decision. Use of the hearing process is costly because it requires that all interested parties in the case prefile direct and rebuttal testimony which is subject to cross-examination during the hearing. Upon completion of the hearing and prior to a final determination by the commissioners, the interested parties may also file briefs regarding the evidence presented during the hearing for consideration by the commissioners.

According to the PSC, 18 conventional rate cases have been processed during the past five fiscal years. The total cost of processing the cases was $1,211,364 or $67,298 per rate case. The exact cost to process a conventional rate case by a utility cannot be determined. However, the PSC estimates the costs at $53,000 to $240,000 per utility per rate case.

The proposed agency action (PAA) process is another less time consuming and less costly means of processing a utility's request for increased rates. In a PAA rate case, PSC staff analyze the
requested rate increase and prepare a recommendation for consideration by the five commissioners. The rate case is voted on by the commissioners and a PAA order is issued. The PAA order becomes a final order if it is not protested by an affected party within 21 days of issuance.

If the PAA order is protested by any affected party, the case is then set for hearing before a panel of commissioners. It is important to note that any potential time and cost savings that could be gained by using the PAA process instead of the conventional rate case process are lost when the PAA order is protested. This is because the PSC must then examine all relevant issues, not just the objected issues. According to the PSC, the PAA process has been used in 155 cases.

The indexing mechanism allows a water and sewer utility to increase or decrease its rates based on an "inflation factor" that is established on an annual basis by the PSC. According to the PSC, 557 index applications have been processed during the past five fiscal years at an average estimated allocated cost to the commission of $836, for a total cost of $465,652. The cost to prepare an index application by a utility should be minimal. However, for the few small utilities that have had their application prepared by an outside consultant, the cost has ranged from $250 to $2,500.

The pass-through procedure allows a utility to increase or decrease its rates based upon changes in certain operating costs.
over which it has no control. For example, water and sewer utilities that purchase their water or sewage treatment from another source are allowed to pass-through an increase in the cost of that treatment. In addition, water utilities are statutorily allowed to pass-through the water quality testing requirements mandated by the Department of Environmental Regulation and the Environmental Protection Agency. According to the PSC, 175 pass-through applications have been processed during the past five fiscal years at an average estimated allocated agency cost of $1,017 for a total cost of $177,975. The cost to prepare a pass-through by a utility should be minimal. However, for the few small utilities that have had their application prepared by an outside consultant, the costs have ranged from $250 to $2,500.

The limited proceeding rate adjustment is a limited rate case in which the PSC considers isolated cost increases faced by a water or sewer utility. According to the PSC, the limited proceeding rate adjustment has not been widely used by the water and sewer industry. Twelve limited proceeding rate cases have been processed by the PSC following enactment of the procedure in 1984 by the Legislature. The average estimated allocated cost to the PSC of processing a limited proceeding rate case is $4,785 for a total of $57,420. The estimated cost to a water and sewer utility to participate in a limited proceeding rate case is $650 for a total cost to the industry of $7,800.
Besides the index and pass-through procedures, a staff assisted rate case program has been implemented to simplify the rate making process. Water and sewer utilities with gross annual revenues of less than $150,000 qualify for the staff assisted rate case program. In a staff assisted rate case, PSC staff perform the accounting, engineering, rate and financial work necessary to justify the utilities requested rate increase. The staff assisted rate case program was developed because most small water and sewer utilities lack the necessary expertise to compile the technical information needed to justify the requested rate increase. The program was also developed because the cost of processing a conventional rate case, to a small water and sewer utility, is so great that, given the small customer base, it would result in rate increases of 100% or more. Thus, the program minimizes the increase in rates paid by the customers of a small water and sewer utility.

Eighty staff assisted rate cases have been processed by the PSC during the past five fiscal years. The average estimated allocated cost to the PSC to process a staff assisted rate case is $24,846 for a total of $1,987,680 for all 80 cases. The estimated cost to a water and sewer utility to participate in a staff assisted rate case is $4,700 for a total cost to the industry of $376,000.

The PSC is authorized by statute to exempt any water and sewer utility records from disclosure under the open government provisions of the Public Records Act. In order to be exempt from
the Public Records Act, the records must be of a proprietary confidential business nature. No definition of "proprietary confidential business information" is provided in the statute. Only examples are given. Appellate review of PSC actions regarding water and sewer matters are by the 1st District Court of Appeal.
V. COST AND BENEFITS OF REGULATION

A. The Industry

1. Cost

The costs of state regulation are initially borne by the water and sewer utilities being regulated. Nevertheless, the costs of state regulation are passed on to the public in the form of higher rates for service. Those costs include application fees and a gross receipts tax. The water and sewer industry pays applications fees that the electric, gas and telecommunication industries do not pay. Section 367.141, F.S., authorizes the PSC to set application fees by rule. Fees are assessed whenever a water or sewer utility: applies for or subsequently seeks to amend its certificate of authorization; applies for a rate increase; or applies for the approval of charges and conditions for service availability. The maximum application fee that may be assessed by the PSC is $2,250.

Water and sewer utilities are also required to pay a gross receipts tax. Section 350.113(3)(e), F.S., indicates that the gross receipts tax paid to the PSC by a water and sewer utility shall not exceed 2.5% of the utility's gross revenues. The 2.5% gross receipts tax paid by water and sewer utilities is the highest paid by any PSC regulated industry.
The costs of state regulation are more burdensome for small water and sewer utilities than for larger utilities. This is because small water and sewer utilities have a smaller customer base and annual operating revenues. Thus, the direct costs of state regulation, such as application fees, a gross receipts tax and rate case expense, take up a greater percentage of a small utility's operating budget. The indirect cost of state regulation, such as compiling and maintaining engineering plans, accounting schedules, etc., are also more burdensome for small utilities. Small utilities are typically understaffed and lack the expertise needed to provide the PSC with the technical information it requires.

2. **Benefits**

Like the public, the water and sewer industry benefits from state regulation in two ways. First, state regulation limits competition by ensuring that only one utility will serve a designated service area so long as it provides adequate service to the customers. Secondly, state regulation provides water and sewer utilities with the opportunity to earn a reasonable rate of return on their actual investment in plant and facilities. The opportunity to earn a reasonable rate of return reduces the risk of investing in a water or sewer utility.
B. The Public

1. Cost

There are costs incurred by the public due to state regulation of the water and sewer industry. The first cost is choice. The public does not have the ability to pick and choose which utility will provide water and sewer service to their home or place of business. A second cost is the rates that utilities charge to provide water and sewer service. This is because the costs of state regulation are passed on to the public in the form of higher rates.

2. Benefits

The public benefits from state regulation of the water and sewer industry because it prevents utilities from abusing their monopoly position. Water and sewer systems cannot refuse to provide service to new customers or discontinue service to existing customers. Water and sewer systems also cannot discriminate in the rates they charge for service or increase their rates without Commission review and advance notice to customers. In addition, utilities cannot expand into the service area of another system and harm the public through the uneconomic duplication of capital intensive water and sewer facilities.
VI. **SUNSET CRITERIA**

Section 11.61, F.S., the Regulatory Sunset Act, contains criteria which the legislature shall consider in determining if a regulatory chapter should be allowed to repeal. These criteria are as follows:

1. Would the absence of regulation significantly harm or endanger the public's health, safety or welfare?

Yes. Deregulation of the water and sewer industry at the state level could be detrimental to the public's health, safety and welfare. Many of the counties presently under the jurisdiction of the PSC do not possess the financial resources or technical expertise that is needed to adequately regulate the water and sewer industry. Deregulation of the industry at the state level could result in a variety of problems caused by a utility's abuse of its monopoly position. Specifically, water and sewer systems could refuse to provide service to new customers or could discontinue service to existing customers. Water and sewer systems could also discriminate in the rates they charge for service or could increase their rates without advance notice to customers. Water and sewer systems would also be able to expand into the service area of other systems which would harm the public through the uneconomic duplication of capital intensive facilities.
2. Is there a reasonable relationship between the exercise of the police power of the state and the protection of the public's health, safety and welfare?

Yes. There is a reasonable relationship between the regulation of the water and sewer industry and the state's police power if the regulation applies directly to the potential for public harm. The potential for public harm in this instance is economic injury that could be sustained by the public due to a water or sewer system's abuse of its monopoly position. At present, utilities which desire to operate a water or sewer system in a county under PSC jurisdiction must obtain a certificate of authorization prior to providing services to the public. In order to obtain the certificate, the utility must show that it is capable of providing quality service, that there is an unmet need for water or sewer service and whether there are any other systems capable of providing service within the area.

Once a certificate has been granted, the utility must obtain PSC approval prior to increasing rates or adding or deleting to its service area. The utility must also obtain PSC approval prior to the sale, assignment or transfer of its certificate of authorization or any portion of its facilities. The oversight authority granted the PSC over the water and sewer industry serves to protect the public from possible utility abuses.
3. **Is there a less restrictive method of regulation which would adequately protect the public?**

No. In addition to rate base regulation, the Commission has implemented several less restrictive forms of regulation. Beyond this, other methods at this time do not appear to adequately protect the public from potential harm.

4. **Does the regulation have the effect of directly or indirectly increasing the cost of any goods or services, and if so, to what degree?**

Yes. There are certain costs to the public associated with state regulation of the water and sewer industry. These costs include a 2.5% regulatory assessment fee paid by the utilities on an annual basis in the form of a gross receipts tax. Other costs include application fees paid by utilities whenever they apply for, or subsequently seek to amend, their certificate of authorization, and the cost of processing a rate increase request. These costs will increase if the regulation of the water and sewer industry is no longer subsidized by the other industries.
5. Is the increase in the cost more harmful to the public than the harm that could result from the absence of regulation?

No. Although it is impossible to determine the exact effect this regulation has on the cost of water and sewer services, staff could not find any evidence to indicate that the costs are unduly burdensome to the public. Staff believes that the regulatory costs are appropriate given the negative impact of non-regulation.

6. Are there facets of the regulatory process designed for the purpose of benefitting, and do they have as their primary effect the benefit of the regulated entity?

No. State regulation of the water and sewer industry is primarily designed to protect the public from a utility's abuse of its monopoly position. However, the water and sewer industry also benefits from state regulation. For example, state regulation limits competition by ensuring that only one utility will serve a designated service area. State regulation also provides water and sewer utilities with the opportunity to earn a reasonable rate of return on their actual investment in plant and facilities. This reduces the risk of investing in a water and sewer utility.
VII. ISSUES, CONCLUSIONS AND RECOMMENDATIONS REGARDING THE CURRENT REGULATORY SCHEME

1. Should it be the policy of the state to grant the Public Service Commission statewide jurisdiction over water and sewer systems?

State policy regarding the manner in which counties come under, or are deleted from, PSC jurisdiction should be reviewed. As stated previously in this report, 45 states, including Florida, regulate the water and sewer industry. However, Florida is the only state in which the jurisdiction of its public service commission is determined by county commissions. The present policy has created an unnecessarily diverse regulatory scheme throughout the state which does not appear to be based on any sound regulatory reasoning.

This diversity is a result of the following. Counties which are not subject to PSC jurisdiction have enacted varying degrees of regulation. Some counties may adequately regulate the water and sewer industry. Other counties may under-regulate the industry or not regulate it at all. Counties which have been removed from PSC jurisdiction by a special act of the Legislature can regulate the industry in whatever manner chosen by the county commission. Counties which remove themselves from PSC jurisdiction through passage of a county commission resolution or county ordinance must regulate the industry using the policies
and procedures contained in chapter 367, F.S. Counties under PSC jurisdiction are, obviously, regulated in accordance with the policies and procedures contained in chapter 367, F.S.

The existence of such a diverse regulatory scheme throughout the state could harm the public's health, safety and welfare. Non-regulation of the industry could harm the public by providing utilities with an opportunity to abuse their monopoly position. Non-regulated utilities could refuse to provide service to new customers or could, at will, discontinue service to existing customers. Non-regulated utilities could discriminate in the pricing of their rates or increase their rates without notice. Non-regulated utilities could also expand into the service area of another water and sewer system which would harm the public through the uneconomic duplication of capital intensive water and sewer utilities.

Under-regulation of the water and sewer industry could result in a utility not being provided the opportunity to earn the revenues needed to remain financially viable. This, in turn, could lead to an increase in the number of water and sewer systems that are abandoned by their owner/operator. Although no statewide analysis of the water and sewer industry has been performed, under-regulation on non-regulation could, in theory, result in customers paying higher rates for water and sewer service than are necessary.
This situation has also engendered a major problem for the water and sewer industry that is not faced by the electric, gas, or telecommunications industries. The electric, gas, and telecommunications industries know how they will be regulated regardless of whether they are providing service in Escambia, Duval or Monroe counties. However, water and sewer utilities have to contend with varying degrees of regulation, or entirely different regulatory schemes, based on where they provide service even though the service they provide does not differ.

There are a number of alternatives to the present county option policy that the Legislature may wish to consider. One alternative would be to eliminate the county option provisions contained in chapter 367, F.S., and grant the PSC statewide jurisdiction over the water and sewer industry. Adoption of this alternative by the Legislature would eliminate the inconsistencies of the present regulatory scheme and the possibility of a utility's abusing its monopoly position.

According to the PSC, regulation of the water and sewer industry by the state is one-third as costly as regulation by the individual county governments. The PSC contends that the 33 counties presently under its jurisdiction would have to employ a professional and technical staff of 132 to obtain the same level of regulation achieved by the 47 personnel assigned to its Division of Water and Sewer. Although state regulation is less costly than regulation by the individual county governments, the PSC would need additional personnel to expand its jurisdiction
statewide. The PSC contends that it would need an additional 42.8 full-time employees. The cost of the 42.8 personnel would be recovered through the collection of application fees and gross receipts taxes from the 553 additional water and sewer systems that the PSC would regulate.

A deficiency of this alternative is that the county commissions which have established effective regulatory programs would be forced to relinquish regulation to the state. However, those county commissions which have not established effective regulatory programs would be relieved of the responsibility and costs associated with regulating the water and sewer industry.

A second alternative would be to modify the county option policy by giving county governments a one-time choice of either regulating the industry or delegating regulation to the PSC. Adoption of this alternative would eliminate some, but not all, of the inconsistencies in the present regulatory scheme.

An additional deficiency of this alternative is that counties which choose to regulate the industry must maintain a full-time professional and technical staff that they would otherwise not maintain. Counties which choose to regulate the industry must use either ad valorem taxes or regulatory assessment fees to pay the costs of regulation. If ad valorem taxes are used, it is possible that citizens could be paying to regulate a utility from which they don't receive water or sewer services.
A third alternative would be to require that all non-PSC jurisdictional county commissions adhere to the regulatory policies and procedures contained in chapter 367, F.S. Adoption of this alternative by the Legislature would eliminate the diversities of the present regulatory scheme. However, as discussed in the previous alternative, counties that are not presently regulating the industry would have to maintain a full-time professional and technical staff that they would otherwise not maintain.

Staff has concluded that the present county option policy has created an unnecessarily diverse regulatory scheme which is not in the best interest of the public's health, safety or welfare. Staff recommends that the Legislature grant the PSC statewide jurisdiction over the water and sewer industry. Expanding the PSC's jurisdiction statewide will benefit the public, the industry and the Legislature.

The public benefits because water and sewer systems regulated by the PSC are not permitted to abuse their monopoly position. The public also benefits from the regulatory expertise that the PSC has developed over the years. The industry benefits because it will be economically regulated in a consistent manner throughout the state by the same governmental entity. The industry also benefits because small water and sewer utilities will be able to obtain the professional and technical assistance that they need to operate in an effective and efficient manner. This will foster the financial health of small water and sewer
systems and should reduce the likelihood of the systems being abandoned.

The state, in general, will also benefit from extending the PSC's jurisdiction statewide. Specifically, centralizing the economic regulation of the water and sewer industry in one state agency will assist the Legislature in addressing future economic and environmental water problems.

2. Can the efficiency of the Public Service Commission be improved by having contested water and sewer cases referred to the Division of Administrative Hearings, Department of Administration?

The issue of whether or not the PSC should refer water and sewer cases to the Division of Administrative Hearings, Department of Administration (DOAH), has developed because of delays, or perceived delays, in scheduling hearing dates for contested water and sewer cases. Specifically, the industry and public are under the impression that water and sewer hearing dates have to be set 18 months in advance and that once set, they cannot be rescheduled because of the inflexibility of the commission's calendar.

The Florida Waterworks Association contends that the Legislature should require the PSC to refer all contested water and sewer cases to the DOAH because the commissioners spend a majority of their time duplicating the fact finding process for which the DOAH was designed. The Florida Waterworks Association
 contends that the commissioners time could be more effectively spent on important functions such as the formulation and preparation of agency policy.

According to the Florida Waterworks Association, there are a number of reasons why the PSC should be required to refer contested water and sewer cases to the DOAH. First, the DOAH employs highly skilled, qualified hearing officers who are experienced in determining questions of fact. Secondly, referring contested water and sewer cases to the DOAH will give the commissioners more time to concentrate on important policy matters. Thirdly, hearing dates can be scheduled earlier than at the PSC because of the ready availability of hearing officers. In addition, the association contends that it is more cost-effective to use DOAH hearing officers.

The PSC contends that there is no problem in having a water or sewer case heard by the commissioners in a timely manner. According to the PSC, the hearing dates for non-emergency water and sewer cases, such as a utility's request for a declaratory judgement or an investigation into a utility's rate base, are currently being scheduled for 1990. These cases are being assigned 1990 hearing dates so that water and sewer rate cases can be heard within the statutorily prescribed 12 month time frame. Utility rate case hearing requests received by the PSC during February 1989 were being assigned October 1989 hearing dates. The PSC also indicated that the commissioners calendar
was sufficiently flexible that, if needed, a case scheduled for October 1989, could be heard in either August or April 1989.

Discussions with the Florida Waterworks Association and the PSC indicate that a majority of the contested water and sewer cases concern a utility's request to increase its monthly rates. Typically, these cases are processed in accordance with the PSC's proposed agency action (PAA) process. As stated previously in this report, the Commission utilizes the PAA process because it produces time and cost savings that cannot be obtained from the conventional hearing process. Regardless of whether the PAA or conventional hearing process is used, the PSC's final order is due within 12 months of the official date of filing.

According to the PSC, it takes approximately five months to process a utility's rate case using the PAA process. An additional 21 days are allocated for review of the PAA order so that interested parties can issue an objection. If the PAA order is objected to, the case must be assigned a hearing date, usually before a panel of two commissioners. It then takes approximately six months for the commission to hear the case and issue its final order within the prescribed 12 month time frame.

If a contested water and sewer rate case is referred to the DOAH after the PAA order is objected to, it would take approximately 90 to 120 days to schedule a hearing date before a hearing officer. An objection to a PAA order and request for a formal hearing, whether before the PSC or a DOAH hearing officer,
commences a de novo proceeding. This means that every aspect of the case, not just the objected issues, have to be reexamined in depth by the commissioners or the hearing officer. DOAH staff indicate that once a hearing date is set it would take another two to four weeks to hear the case and another 30 days for the hearing officer to prepare the findings of fact. The PSC estimates that it will need 90 days to review the findings of fact and the hearing officers recommended order. Staff disagrees with this estimate but acknowledges that the PSC will need time to review the case prior to issuing its order.

Although it appears that the referral of a contested water and sewer case to the DOAH could produce limited time savings, former DOAH staff indicate otherwise. A former DOAH staff member indicated that the 30 days presently allocated for the hearing officer to prepare the findings of fact and issue the recommended order may be an insufficient amount of time. As much as 45 to 60 days may be needed to prepare the findings of fact and recommended order.

It appears to staff that requiring the PSC to refer contested water and sewer cases to the DOAH will not produce any substantial time savings. Besides the practical aspects involved with referring contested water and sewer cases to the DOAH, staff believes that there is an even more important policy aspect that the Legislature should take into consideration. If water and sewer cases are referred to the DOAH, the public's access, and ability to present evidence, directly to the commissioners would
be severely limited or eliminated since the commissioners would no longer be conducting these meetings.

At present, the PSC is required by s. 367.081(2), F.S., to take into consideration the quality of service that a utility customer receives whenever a utility requests a rate increase. The PSC fulfills this requirement by having the commissioners assigned to hear the case, travel to the utility's service area for the purpose of holding a customer service meeting. At the meeting, the commissioners receive comments from utility customers regarding the quality of service provided by the utility, as well as comments on the requested rate increase. Unlike most customer service meetings held for the electric, gas and telecommunication industries, the water and sewer meetings are well attended. The meetings are well attended because utility customers probably see this as their only opportunity to speak directly to the commissioners responsible for approving or denying a utility's requested rate increase.

Staff believes that the comments the commissioners receive from the public at the customer service hearings and regular rate hearings have value and are essential to the regulation of the water and sewer industry. Should the Legislature require that the PSC refer contested water and sewer system cases to the DOAH, the public's access to and ability to present evidence to the commissioners would either be severely limited or eliminated altogether. In fact, this was one of the principal reasons why the PSC discontinued referring any substantive water and sewer
system cases to the DOAH in 1983. In staff's opinion, the referral of water and sewer cases to the DOAH would result in a loss of public confidence in the regulatory process, and would hinder the PSC from discharging its statutory responsibilities. The function of the Commission, and Commissioners, is to regulate. Until that changes, the Commission, not DOAH, should conduct these hearings.

Staff has concluded, based upon practical considerations as well as established policy, that the efficiency of the PSC would not be improved by having contested water and sewer cases referred to the DOAH. Therefore, staff recommends that no changes be enacted by the Legislature at this time.

3. Should the Public Service Commission's statutory exemptions to the Public Records Act be continued? If so, are modifications appropriate?

A. Discussion

The commission has reasonable access to all public utility records pursuant to s. 367.156, F.S. In conjunction with this authority, the commission has the mandate to issue protective orders protecting a public utility from discovery of proprietary confidential business information. Such information is exempt from disclosure to the public under s. 119.07(1), Florida Statutes, commonly referred to as the Public Records Law. If the commission determines that the confidential information is necessary to protect public interest, the commission shall issue
an order limiting discovery and allow the information to be used pursuant to discovery provisions of the Florida Rules of Civil Procedure (FRCP).

The term, proprietary confidential business information, is not statutorily defined. A non exclusive list of what is encompassed by the term is contained in the statute. That list is:

- trade secrets;
- internal auditing controls and reports of internal auditors;
- security measures, systems, or procedures;
- information concerning bids or other contractual data, the disclosure of which would impair the efforts of the public utility to contract for services on favorable terms; and
- employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

This same language basically appears in all three of the Commission's regulatory chapters. (Chapters 364, 366 & 367, F.S.)

Requests for confidential treatment of documents have steadily increased over the years. In the first year of the exemption, 76 requests were filed with the Commission. In 1988, 299 requests were filed. There are several reasons for the
increase in requests. The most relevant being the increased competition in the telecommunications industry.

The Commission's handling of proprietary confidential business information is not without legal challenge. A case filed by several newspapers, currently before the First District Court of Appeal, challenges a lower court opinion upholding: the Commission's determination, in a telephone proceeding, of confidentiality regarding certain documents; and the Commission's exclusion of the general public and press from portions of two administrative hearings in which the Commission reviewed, as part of the case, information which had previously been determined to be proprietary confidential business information.

Although this appeal is based on the confidentiality provisions in the chapters relating to regulation of the telephone industry and the electric industry, the confidentiality provision in this chapter reads, as stated earlier, basically the same. A discussion of the issues here is, therefore, relevant.

The issue of whether the Commission can close its proceedings to consider information previously determined to be proprietary confidential business information revolves around the inter-relationship of several statutory provisions. Section 286.011, F.S., commonly referred to as the Sunshine Law, requires commission meetings to be open to the public. The Commission, in its briefs, cites case law which holds that when there is a conflict between a specific exemption to the Public Records Law
and the open public meetings requirements of the Sunshine Law, the later more specific expression of the Legislature will prevail. The PSC exemptions to the Public Records Law were enacted after the Sunshine Act was passed. It is the Commission's position that this allows the Commission to close a hearing to consider confidential information.

The newspapers petitioners contend that the exemptions in question are exemptions to the Public Records Act, not the Sunshine Law. As such, they are within the provisions of s. 119.07 F.S., which declare that public records presently provided by law to be confidential shall not create an exemption to the Sunshine Law.

The PSC disagrees with this interpretation on two grounds. First, its exemptions to the Public Records Act are not contained in the referenced section of s. 119.07, F.S. Second, since the exemptions were passed after the above prohibition was enacted, they are not affected by it. The case will be argued the second week of April.

Earlier portions of this sunset report conclude that the regulation established in chapter 367 is necessary for the public health, safety, and welfare. The report, therefore, recommends that this chapter, including s. 367.156, be re-enacted.

The need for this exemption appears to be further supported, to varying degrees, by all aspects of the industry and the regulatory community. The Commission, in responses to
legislative inquiries, has stated that the exemption is necessary to effectively and efficiently regulate the industry. Access to proprietary confidential business information is necessary to determine how well companies are providing service to the public, and if expenses are being properly allocated between regulated operations and non-regulated affiliates. According to the Commission, such information would be extremely difficult to obtain without the exemption to the Public Records Act Law.

The industry supports the continued exemption because it prohibits release of business information that would be valuable to existing, or potential, competitors. As such, it protects them from harm in the marketplace.

The Office of Public Counsel takes the position that the exemption to the Public Record Law does not significantly help or hinder the state's responsibility to regulate utilities. The Commission, and other parties to Commission proceedings, have always been able to gain access to necessary records through traditional discovery mechanisms. According to Public Counsel, the exemption does, however, provide a derivative benefit. To the extent that disclosure of such information might lead to utilities having to pay more for products and services they purchase, the exemption helps to lessen the cost of utility service and the rates customers must pay.

The Commission has proposed two changes to this section. The first change is to provide confidential treatment to records
received from entities other than a regulated utility. The purpose of this amendment is to protect the confidential records of non-utility companies who are often hesitant to provide information deemed relevant by the Commission for fear of public disclosure of trade secrets. This change could also apply to records supplied by affiliates of regulated utilities.

The second suggested change is to impose a time limit on the confidential status of a document. After the time limit has expired, the document will become a public record unless the company renews its requests and the Commission determines that the document contains information which is still proprietary confidential business information. The Commission's suggested time period is 18 months. The commission's inventory of confidential information indicates that some documents filed with the Commission as early as 1981 are still classified as exempt from the Public Records Law.

The office of Public Counsel comments that s. 367.157, F.S., as currently written, raises the private interest of a utility in keeping information secret above the public's interest in open access to information filed with public agencies. Further, the statute is contrary to discovery provisions of the Florida Rules of Civil Procedure which are applicable to administrative proceedings pursuant to Chapter 120, F.S.

According to Public Counsel, Rule 1.280, FRCP, allows any party to obtain discovery regarding any matter, not privileged,
which is relevant to the subject matter of the pending action. Protective orders are also provided for under the rule. Discovery is, therefore, generally permitted whenever the information is relevant, and protective orders are available to safeguard against improper disclosure outside of the litigation.

It is Public Counsel's position that the current statute reverses this approach. It is only if the Commission determines that discovery is necessary to protect the public interest that the Commission must allow discovery of confidential information, subject to appropriate protective orders consistent with the Florida Rules of Civil Procedure.

B. Conclusions and Recommendations

The necessity for an exemption to the Public Records Law for appropriate confidential material received by the Commission does exist. There are numerous similar statutory exemptions for other types of sensitive business information. (See ss. 193.074, 230.66, 337.14, 403.111, 502.222 and 655.033, F.S.,). The section as currently drafted, however, does intertwine several issues. These issues being access to records, discovery, and confidentiality. To clarify the reading of the section, it should be divided so that each issue could be addressed in a separate section.
1. **Access to Records**

Access to public utility records is essential. Access to records of parent companies and, as companies diversify, affiliated companies is also necessary. Holding company diversification may present problems for regulators from the standpoint of ensuring that utility rate payers do not subsidize nonutility investments.

The Commission is currently in the process of adopting a rule on diversification which would require regulated utilities to submit additional informational filings on affiliated activities. The Commission rule does not, and can not, go far enough because of the absence of legislative authority to seek access to records of affiliated companies. Unless affiliated activities can be examined from both sides of the transaction, it can not be actually determined if cross subsidies, in fact, are occurring.

Criticism that no discernible problem exists in this area so no statutory change is necessary begs the question. Until these transactions can be completely reviewed, one does not know if there is cause for concern. It is recommended, therefore, that the Commission be provided with the legislative authority to have reasonable access to records of affiliated companies of a regulated utility.
2. **Discovery**

The Florida Administrative Code specifically provides for agencies to effect discovery in the manner provided by the Florida Rules of Civil Procedure. (See 120.58(1)(b), F.S.) The Commission, by rule, recognizes that parties may obtain discovery through the means and in the manner provided for in the Florida Rules of Civil Procedure (See s. 25-22.034, F.A.C.).

Rule 1.280(b)(1), FRCP, states in part:

> Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action ... (emphasis supplied)

Section (c) of the same rule goes on to state that a protective order may be issued so:

> ...that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;...

The approach taken in the Florida Rules of Civil Procedure is, therefore, to allow a party to obtain discovery whenever the information is relevant. Protective orders may then be issued to safeguard against improper disclosure outside of the proceeding.

This approach is not reflected in the discovery procedures of s. 367.157, F.S. Instead, proprietary confidential business information can be obtained through discovery only if necessary to protect the public interest. This statute, in effect, does
reverse stated policy by placing relevant information beyond the reach of discovery unless a party can show that public interest overrides a utility's claim of confidentiality. Accordingly, it is recommended that the section be amended to reflect the discovery approach utilized in the Florida Rules of Civil Procedure and made applicable to state agencies by the Florida Administrative Procedures Act.

3. Confidentiality

Records determined by the Commission to be proprietary confidential business information are exempt from disclosure under the Public Records Law. What information is actually encompassed by this term can only be estimated from the common meaning of the individual words of the term and the non exclusive list of examples. Given the vast amounts, and varying types, of information which the Commission must review in performing its duties, it is difficult to identify each piece of information which may appropriately be confidential. This argues in favor of some latitude. The complete lack of a definition, however, does create an extraordinary degree of discretion within the Commission as to what is, or is not, exempt from the Public Records Law.

Any attempt to define this term will be criticized for its shortcomings. Staff believes, however, that a definition which attempts to identify and limit the type of information addressed by the term is better than no definition at all. It is
recommended, therefore, that a statutory definition be included in the section to define proprietary confidential business information.

The Commission's proposed change allowing protective orders to be issued to entities other than utility companies should be implemented. It is conceivable that other entities would, appropriately, need this protection, especially if they are operating in a non-regulated environment.

The suggested change to impose a time limit on the confidential status of a document should also be adopted. This should ensure that documents do not stay exempt from the Public Records Law "ad infinitum" due to inaction by the Commission or the party who sought the exemption. The time period should, however, be reduced from the recommended 18 months to one year. The Commission is statutorily given one year to process rate cases. This time period, therefore, seems more appropriate.

The question of the Commission's authority to close public hearings in order to consider evidence which has previously been declared proprietary confidential business information is presently being reviewed by the Courts. Thus, it would be inappropriate for staff to comment on this legal controversy. However, it is entirely appropriate for staff, during a sunset review, to address the policy issues involved.

Information which is exempt from the Public Records Law can be considered at open public meetings without violating its

Case law does recognize that, at times, an exemption to the Public Records Law negates the open meeting requirement of the Sunshine Law. (See Capeletti Bros. Inc. v. Depart. of Transportation, 499 So. 2d 855 (1st DCA 1986), and Marston v. Gainesville Sun Publishing Co. v. Chappell, 403 So. 2d 1342 (3rd DCA 1981), cited by parties in the appeal of this issue).

Specific statutory provisions do prohibit dissemination or disclosure at public hearings of information which is held confidential by state agencies. (See, for example, s. 403.772, F.S., relating to the Department of Environmental Regulation.)

The question to be considered is whether legislative policy should be clarified as to whether the Commission should be able to close public hearings to consider confidential information. The Legislature may wish to take the opportunity provided by this sunset review to clarify this issue. It is also recommended that conforming changes be made to the statute so that it tracks the language of the Commission's other confidentiality statutes.
4. Should the PSC's cost of regulating the water and sewer industry be borne by the regulated water and sewer systems?

The Public Service Commission has requested a change in the statutes that would significantly increase the regulatory assessment and application fees paid by water and sewer utilities. The requested change would also expand the services for which an application fee must be paid by a utility to include staff assisted rate cases and limited proceeding rate cases. Specifically, the PSC has requested changes to sections 367.141 and 367.151, F.S., so that the application fee cap can be increased to $4,500 and the regulatory assessment fee to 4.5% of the utility's gross revenues derived from intrastate business.

The PSC has requested that the regulatory assessment and application fee caps be increased in order to recover the operating deficit associated with the regulation of the water and sewer industry. Regulation of the water and sewer industry has, in the past, been subsidized by the electric industry and to a lesser degree by the telecommunication industry. The water and sewer industry will continue to be subsidized through fiscal year 1990-91 unless the Legislature authorizes an increase in the fee caps.

The Legislature is presently considering a policy which would require that all regulated professions, occupations, businesses,
and industries pay the cost of their regulation by the state. Consideration of this policy was prompted, in part, by the fact that 18 of the professional boards within the Department of Professional Regulation are operating at a deficit. These boards, in a similar manner to the water and sewer industry, are being subsidized by financially solvent boards.

Staff believes that this cost accountability policy for the PSC regulated water and sewer systems is appropriate. This policy should be adopted because, in staff's opinion, it is inappropriate for electric and telephone utility customers to subsidize state regulation of the water and sewer industry. Staff believes that an increase in the application and regulatory assessment fees paid by the industry is not inappropriate, given the current regulatory costs of the industry. Staff also recommends that the Legislature adopt a policy, within chapter 367, F.S., which will require regulated water and sewer systems to pay the cost of their regulation by the state. The policy should also prohibit the subsidization of water and sewer regulation by funds collected from other PSC regulated industries.

5. Should policy changes be enacted which will reduce the demand for and number of small sewer systems?

Nationally, the water and sewer industry is dominated by a large number of small water and sewer systems. Approximately 87% of the 60,000 water and sewer systems in the United States serve
3,300 customers or less. According to the DER, small sewer systems in Florida account for more than 80% of the treatment plants being built, yet treat only 4% of the state's sewage. Of the 377 sewer systems regulated by the PSC, approximately 71% or 267 are "Class C" utilities. Class C utilities are the smallest utilities regulated by the PSC. They are defined in section 25-30.110(4)(c), F.A.C., as being water or sewer utilities with gross annual revenues of $150,000 or less.

The large number of small sewer systems creates serious regulatory problems for the PSC that are not encountered with larger systems. These problems include, but are not limited to:

**The possibility of abandonment**

Small sewer systems are more likely to be abandoned by their owner/operator than larger systems because of their small customer base and reduced cash flow. The probability of abandonment is substantially increased by the enactment and enforcement of more stringent treatment standards. In some cases, the costs of complying with treatment standards are so great that it is easier to abandon the system than make the necessary repairs. The abandonment of a small sewer system requires that PSC staff assist in locating a receiver to operate the system until the property is sold or foreclosed. Abandonment also affects the quality of service that customers receive and the rates they pay. According to the
PSC, 15 class C utilities have been abandoned during the past five years.

**The costs of regulation**

The costs and staff time needed to regulate smaller sewer systems is greater than the costs and staff time needed to regulate larger systems. This is demonstrated by the PSC's need to establish a staff assisted rate case program for the smaller sewer systems. During a staff assisted rate case, PSC staff perform all the accounting, engineering, rate and financial work necessary to justify a utility's requested rate increase. The PSC has processed 80 staff assisted rate cases during the past five years at a cost of $24,846 per case. It also appears that the costs of regulating the 267 small sewer systems contributes to the operating deficit of the PSC's Regulatory Trust Fund.

**Financial difficulties**

Class C utilities have more financial problems than larger utilities. This is because small utilities, at times, lack a large enough customer base to be profitable. The small customer base means that gross revenues are usually insufficient to pay fixed costs. Small utilities also tend to collect large amounts of CIAC which reduce the utility's investment in plant and equipment and limits the future revenues that can be collected through increased rates. In
addition, there is concern that a small sewer system is more likely to harm the environment through the release of untreated sewage and wastewater. According to the DER, small sewer systems create most of the headaches for environmental regulators because they tend to be underfinanced, understaffed and improperly run.

Although the large number of small sewer systems create a number of serious regulatory problems, the PSC has little choice but to certificate and regulate them. According to section 367.051(3)(a), F.S., the PSC cannot deny a utility's application for a certificate of authorization unless the applicant's system will be competing with or duplicating the service offered by another system.

There are several alternatives to the current situation that the Legislature may wish to consider. One alternative would be to promulgate a policy in which the PSC is specifically prohibited from certificating any new Class C sewer systems. Adoption of this alternative by the Legislature would limit the number of utilities plagued by the previously discussed problems to those presently operating. Adoption of this alternative should also limit the increase in regulatory costs that is created by small sewer systems while also limiting the harm that these systems could cause the environment. Implementation of this alternative could be accomplished by amending section 367.051, F.S.
A second alternative would be to grant the PSC the authority to deny a certificate of authorization to any new Class C sewer system if public needs can be adequately served by modifying or extending a current system. In addition to having the benefits of the first alternative, adoption of this alternative would allow the PSC to test the benefits of new methods of regulation. For example, adoption of this alternative would allow the PSC to test the benefits of regionalization. Regionalization is a concept in which only one Class A sewer system is certificated to serve an entire region. As the region's population grows, the sewer system is expanded to meet the service demand. A regional sewer system should be economically and environmentally less fragile than a Class C system.

Staff has concluded that the continued certification of Class C sewer systems is harmful to the public's health, safety, and welfare. The continued certification of Class C sewer systems is harmful to the public because of the increased probability of abandonment by the owner/operator which could affect the rates that customers pay for service and the quality of service that they receive. Class C sewer systems also appear to be more expensive to regulate and contribute to the operating deficit of the PSC's regulatory trust fund. The added costs of regulating small sewer systems are recovered through higher regulatory and application fees which are, in turn, passed on to customers in the form of higher rates. It also appears that small sewer
systems are more likely to harm the environment than larger sewer systems.

Staff believes that it would be unreasonable to eliminate the certification of all new Class C sewer systems because it would prevent many citizens from ever being served by a sewer system. However, it is reasonable for the Legislature to enact policy changes which will reduce the demand for and number of small sewer systems. Therefore, staff recommends that the PSC be granted the authority to deny a certificate of authorization to any new Class C sewer system if the public can be adequately served by modifying or extending a current sewer system. Staff also recommends that the Legislature strongly encourage the PSC to test the benefits of regionalization. Adoption of this recommendation should reduce the number of, and demand for, small sewer systems. In addition, adoption of this recommendation should facilitate the management of new growth and aid the Legislature in formulating a statewide water policy.

6. Should the Public Service Commission require water and sewer systems to collect a minimum level of CIAC as a means of achieving and sustaining reasonable rates?

Contributions in aid of construction (CIAC) are impact fees levied on new residents to pay the cost of additional water and sewer lines. These are usually a one-time lump sum payment made by a customer when they connect to a water and sewer system.

CIAC is defined in section 367.081(2), F.S., as:
any amount of money, services, or property received by a utility, from any person or governmental agency, 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 utilized to offset the acquisition, improvement, or construction costs of the utility property, facilities, or equipment used to provide utility services to the public.

CIAC is used in significant amounts by the water and sewer industry, but not by the electric, gas and telecommunication industries. According to the PSC, there are a number of factors which explain the use of CIAC by the water and sewer industry. First, most water and sewer systems were built out of necessity by developers in order to sell lots. Second, the collection of CIAC enabled developers or utility owners to recover funds they had invested in the utility or to avoid investing further funds in the utility. The collection of CIAC by developers and utility owners also ensures a steady cash flow during the early years of operation when the utility did not have a large customer base.

The PSC has promulgated a policy, in the form of an administrative rule, which stipulates the maximum and minimum amount of CIAC that a water and sewer utility may collect. Section 25-30.580, F.A.C., limits the maximum amount of CIAC allowed, net of amortization, to 75% of the total original cost, net of accumulated depreciation, of the utility's facilities when such facilities are serving at capacity. The minimum amount of CIAC is limited to that portion of the utility's plant represented by the water transmission and distribution system and sewage collection system.
According to the PSC, the CIAC policy was enacted as a means of reducing the long-term service rates paid by utility customers. The 75% maximum was established in order to limit entry into the industry to only those investors who were committed to the long term financial health of the utility. A second objective was to provide a return on the utility's rate base to cushion against unexpected loses due to increased maintenance expenses. The purpose in establishing a minimum amount of CIAC was to minimize the long term water and sewer rates paid by customers.

It appears that the PSC's present policy of stipulating the maximum and minimum amount of CIAC that a utility may collect has engendered a number of problems. First, the current CIAC policy may not have successfully alleviated the primary problem it was designed to resolve, which was to prevent established customers from paying the costs of additional water and sewer lines needed to serve new customers. A report prepared by PSC staff indicates that subsidies of one group by another continue to exist.

Secondly, customers may be required to pay CIAC twice: once, upon initial hookup to the water and sewer system, and a second time if, and when, the utility interconnects with a system owned or operated by a local government.

A third problem concerns the income tax status of CIAC. The 1986 Tax Reform Act removed the exemption previously granted CIAC collected by a utility. As a result of this change, CIAC is now
taxed by the federal government as ordinary income to the utility during the year in which it is received. Because of this change some utilities face a substantial increase in their federal income taxes which they pass through to new customers in the form of higher CIAC charges. At present, 46 water and sewer utilities pass through the tax on CIAC to new customers. Customers served by these utilities are paying higher CIAC charges as a result of the PSC's minimum CIAC requirement.

Another problem with the current policy is that there are instances in which a utility may, by meeting the minimum CIAC requirement, be exceeding the maximum level of CIAC. This occurs when the cost of a utility's transmission and distribution system, net of depreciation, exceeds the cost of the treatment plant.

The policy also appears to have substantially increased the workload of the PSC. The workload has increased because PSC staff, on a case by case basis, must examine the amount of CIAC collected by a utility in order to determine if the utility is complying with the PSC's policy. This case by case examination usually occurs when the utility requests a rate increase. This could deter a small water or sewer utility from seeking a needed rate increase because the amount of CIAC it collects exceeds the 75% maximum prescribed by the PSC.

Staff has concluded that the present PSC policy regarding the collection of CIAC is in need of review and revision. It has not
successfully alleviated the primary problem it was designed to resolve, which was to prevent current customers from paying the costs of new customer growth. The policy has also engendered a number of unexpected problems which need to be resolved. Although the PSC's CIAC policy is problematic, staff believes that it is not necessary for the Legislature to take any action at this time. Therefore, staff recommends that the PSC review and revise its present CIAC policy.

7. What should state policy be when a non-PSC regulated water and sewer system encroaches upon the service area of a PSC regulated system?

The Legislature has determined that it is in the best interest of the public's health, safety and welfare to allow water and sewer systems regulated by the PSC to operate as a monopoly. Regulated water and sewer systems are allowed to operate as a monopoly because of the capital-intensive nature of the industry and the impracticality of competition.

The PSC can prevent a regulated water or sewer system from encroaching upon the service area of another PSC regulated water and sewer system by denying the utility's application for a certificate of authorization. Section 367.051(3)(a), F.S., authorizes the PSC to withhold a certificate of authorization if the applicant's system will be competing with or duplicating the service offered by another system. However, the commission is powerless to prevent a non-PSC regulated (or exempt) water or
sewer system from encroaching upon the certificated service area of a PSC-regulated water or sewer system.

The PSC has proposed a change in chapter 367, F.S., that would amend the state's policy on encroachment in counties regulated by the commission. Specifically, the change proposed by the PSC would prohibit any utility, regardless of whether it is a regulated or non-regulated utility, from encroaching upon the service area of a regulated water and sewer system. The change proposed by the PSC would also enable the commission to approve an encroachment if it was in the public's interest.

Both the PSC and the Florida Waterworks Association contend that the proposed change is needed to prevent non-PSC regulated water and sewer systems from unnecessarily duplicating existing capital-intensive systems. According to the PSC, the encroachment of one water or sewer system upon another results in higher service rates for customers of the encroached system. This is because water and sewer systems are designed to serve a specific number of customers. Encroachment prevents the water or sewer utility from achieving its design capacity and results in customers paying higher rates than they should. The PSC and the Waterworks Association also contend that the change is needed in order to protect PSC regulated water and sewer systems from losing existing customers while expanding to meet the needs of new customers.
An opposing viewpoint is that there is not a sufficient encroachment problem in the state to warrant the changes proposed by the PSC. For non-PSC regulated systems, the proposed change will effectively limit their growth, thereby preventing them from expanding to meet the needs of new customers. It is also possible that the proposed language could effectively prevent municipal governments, that operate water and sewer systems, from annexing unincorporated areas that are desirous of receiving these services.

There are several alternatives to the present situation that the Legislature may wish to consider. One alternative would be to regulate the water and sewer systems presently exempt from chapter 367, F.S. Regulation of the exempt systems in counties under PSC jurisdiction should eliminate any potential encroachment problem from developing. This is because the exempt systems, like the non-exempt systems, would have to obtain approval from the PSC prior to extending their service area.

Although this alternative should prevent encroachment from becoming a major problem, it would be a dramatic departure from the Legislature's past and present regulatory policy. Specifically, the Legislature has always exempted water and sewer systems owned or operated by governmental agencies, homeowner associations or cooperatives. The Legislature has not regulated these water and sewer systems because their rates, policies and operating practices were effectively governed by either the electorate or their owner-members.
Besides being a dramatic departure from past and present regulatory policy, this alternative could increase the rates paid by the customers of exempt water and sewer systems. The rates could increase because the systems would be required to pay the gross receipts tax and application fees presently paid by PSC regulated water and sewer systems. The utilities would pass this cost on to customers in the form of higher rates for service. Should the Legislature wish to implement this alternative it could do so by modifying the exemptions contained in s. 367.022, F.S.

A second alternative would be to prohibit any system from encroaching upon the service area of a regulated water and sewer system unless the PSC had determined that it was in the public's best interest. Unlike the first alternative, this alternative should prevent encroachment from becoming a major problem without dramatically altering the Legislature's present regulatory policy or increasing the rates paid by the customers of exempt water and sewer systems. This alternative could be implemented by creating a new section within chapter 367, F.S.

Staff has concluded that it is not in the best interest of the public's health, safety or welfare to adopt the statutory changes proposed by the PSC. This is because there is not a sufficient encroachment problem to warrant the proposed statutory change. The proposed change could also effectively prevent municipal governments from annexing unincorporated areas which are interested in obtaining municipal water and sewer service.
Such growth management problems are addressed elsewhere in the statutes. Therefore, staff recommends that the Legislature not adopt the statutory changes proposed by the PSC.

8. Is the process by which water and sewer utilities apply for, obtain, and subsequently amend their certificates of authorization as efficient as it could be?

The Public Service Commission and Florida Waterworks Association have proposed changes to the procedures which govern the manner in which a water and sewer utility applies for, obtains, and subsequently amends its certificate of authorization. These procedures are contained in sections 367.041, F.S.; 367.051, F.S.; 367.055, F.S.; and 367.061, F.S. The Florida Waterworks Association contends that the procedures contained in these sections need to be changed because they have been troublesome for the PSC, its staff, the water and sewer industry, developers, and the general public throughout their history. The PSC concurs and has incorporated the association's proposed changes in its 1989 legislative package for chapter 367, F.S.

Staff has reviewed the certification procedures currently in place as well as the proposed changes submitted by the PSC and the Florida Waterworks Association in order to determine if the process was as efficient as it could be. Staff found that the current procedures are not as efficient as they could be and that the proposed changes do not appear to substantially improve the
efficiency of the certification process. Staff has made modifications to the certification process which should update and improve the efficiency of the process. These modifications are reflected in the proposed committee bill prepared by staff for the committee's consideration and review.

9. Is chapter 367, F.S., in need of additional technical changes?

A review of chapter 367, F.S., by staff indicates that a number of technical changes need to be enacted in order to streamline and update the regulation of the water and sewer industry. Staff has incorporated these various technical changes in the proposed committee bill prepared for the committee's review and consideration.
Appendix A

Chapter 367, Florida Statutes
367.031 Certificate. — Prior to the issuance to a utility of a permit by the Department of Environmental Regulation for the construction of a new water or sewer facility, the utility shall obtain a certificate authorizing it to provide service. Each utility subject to the commission's jurisdiction shall possess a current certificate.

367.041 Application. — Each applicant for a certificate shall:

1. Provide information required by rule or order of the commission, which may include a detailed inquiry into the ability of the applicant to provide service, the territory and facilities involved, the need for service in the territory involved, and the existence or nonexistence of service from other sources within geographical proximity to the territory applied for.
2. File with the commission schedules showing all rates, classifications, and charges for service of every kind furnished by it and all rules, regulations, and contracts relating thereto.
3. File the application fee required by s. 367.141, and
4. Submit an affidavit that the applicant has caused notice of its intention to file an application to be given:
   a. By mail or personal delivery to the governing body of the county or city affected, to the public counsel, and to the commission, and
   b. To such other persons and in such other manner as may be prescribed by commission rule.

Notice shall be given no later than 30 days prior to the filing of the application.

367.051 Issuance of certificate. —

1. If, within 20 days following the official date of filing of the application, the commission does not receive written objection to the application, the commission may dispose of the application without hearing. If the applicant is dissatisfied with the disposition, he shall be entitled to a proceeding under s. 120.57.
2. If, within 20 days following the official date of filing, the commission receives from the public counsel or a governmental agency, or from a utility or consumer who would be substantially affected by the requested certification, a written objection requesting a proceeding pursuant to s. 120.57, the commission shall order such proceeding conducted in or near the territory applied for, if feasible. Notwithstanding the ability to object on any other ground, a county or municipal government has standing to object on the ground that the issuance of the certificate will violate established local comprehensive plans developed pursuant to ss. 163.161-163.3211. If any consumer, utility, or governmental agency or the public counsel requests a public hearing on the application, such hearing shall, if feasible, be held in or near the territory applied for and the transcript of such hearing and any material submitted at or before the hearing shall be considered as part of the record of the application and any proceeding related thereto.

3. (a) The commission may grant a certificate, in whole or in part or with modifications in the public interest, but may in no event grant authority greater than that requested in the application or amendments thereto and noticed under s. 367.041, or it may deny a certificate. The commission shall not grant a certificate for a proposed system, or for the extension of an existing system, which will be in competition with, or a duplication of, any other system or portion of a system, unless it first determines that such other system or portion thereof is adequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service.
   (b) When granting a certificate, the commission need not consider whether the issuance of the certificate is inconsistent with the local comprehensive plan of a county or municipality unless an objection to the certificate has been timely raised in an appropriate motion or application. If such an objection has been timely raised, the commission shall consider, but not be bound by, the local comprehensive plan of the county or municipality.
   (c) Revocation, suspension, transfer, or amendment of a certificate shall be subject to the provisions of this section and s. 367.041, except that the commission shall give notice as required in s. 367.041 when it initiates such action.

367.055 Application for deletion of territory. —

1. Each applicant for deletion of territory shall:
   a. Provide the information required by rule or order of the commission, which may include a detailed inquiry into the ability or lack of ability of the applicant to provide service, the need or lack of need for service in the territory sought to be deleted, and the existence or nonexistence of service from other sources within geographical proximity to the territory sought to be deleted.
   b. File the application fee required by s. 367.141.
   c. Submit an affidavit that the applicant has caused notice of its intention to file an application to be given:
      1. By mail or personal delivery to the governing body of the county or municipality affected, to the public counsel, and to the commission, and
      2. To such other persons and in such other manner as may be prescribed by commission rule.
   d. Notice shall be given no later than 30 days before the filing of the application.

2. If the commission does not receive written objection to the application within 20 days following the official date of filing of the application, it may dispose of the application without hearing. If the applicant is dissatisfied with the disposition, the applicant shall be entitled to a proceeding under s. 120.57.
3. If, within 20 days following the official date of filing, the commission receives from the public counsel or
 CHAPTER 367
WATER AND SEWER SYSTEMS

367.011 Jurisdiction; legislative intent.—(1) This chapter may be cited as the “Water and Sewer System Regulatory Law.”

(2) The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates.

(3) The 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. The provisions of this chapter shall be liberally construed for the accomplishment of this purpose.

(4) This chapter shall supersede all other laws on the same subject, and subsequent inconsistent laws shall supersede this chapter only to the extent that they do so by express reference. This chapter shall not impair or take away vested rights other than procedural rights or benefits.

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

(1) “Commission” means the Florida Public Service Commission.

(2) “Certificate” means a document issued by the commission authorizing a utility to provide service in a specific territory.

(3) “Utility” means a water or sewer utility and, except as provided in s. 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or sewer service to the public for compensation.

(4) “System” means facilities and property used or useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities and property.

(5) “Governmental agency” means a political subdivision authorized to provide water or sewer service.

(6) “Territory” means the geographical area described in a certificate, which may be within or without the boundaries of an incorporated municipality and may include areas in more than one county.

(7) “Official date of filing” means the date upon which it has been determined, pursuant to s. 367.083, by the commission or its designee that the utility has filed with the clerk the minimum filing requirements as established by rule of the commission.

(8) “Corporate undertaking” means the unqualified guarantee of a utility to pay a refund and any interest connected therewith which may be ordered by the commission at such time as the obligation becomes fixed and final.

367.022 Exemptions.—The following are not subject to regulation by the commission 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 agencies.

(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 or 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, and

(8) Any person who resells water or sewer 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 s. 367.172.
quired by duly authorized governmental authority to be constructed in the public interest within a reasonable time in the future, not to exceed 24 months.

(3) The commission, in fixing rates, may determine the prudent cost of providing service during the period of time the rates will be in effect following the entry of a final order relating to the rate request of the utility and may use such costs to determine the revenue requirements that will allow the utility to earn a fair rate of return on its rate base.

(4)(a) On or before March 31 of each year, the commission by order shall establish a price increase or decrease index for major categories of operating costs incurred by utilities subject to its jurisdiction reflecting the percentage of increase or decrease in such costs from the most recent 12-month historical data available. The commission by rule shall establish the procedure to be used in determining such indices and a procedure by which a utility, without further action by the commission, or the commission on its own motion, may implement an increase or decrease in its rates based upon the application of the indices to the amount of the major categories of operating costs incurred by the utility during the immediately preceding calendar year, except to the extent of any disallowances or adjustments for those expenses of that utility in its most recent rate proceeding before the commission. The rules shall provide that, upon a finding of good cause, including inadequate service, the commission may order a utility to refrain from implementing a rate increase hereunder unless implemented under a bond or corporate undertaking in the same manner as interim rates may be implemented under s 367 082. A utility may not use this procedure to increase any operating cost for which an adjustment has been or could be made under paragraph (b) or to increase its rates by application of a price index other than the most recent price index authorized by the commission at the time of filing.

(b) The approved rates of any utility which receives all or any portion of its utility service from a governmental agency or from a water or sewer utility regulated by the commission and which redistributes that service to its utility customers shall be automatically increased or decreased without hearing, upon verified notice to the commission 30 days prior to its implementation of the increase or decrease that the rates charged by the governmental agency or other utility have changed. The approved rates of any utility which is subject to an increase or decrease in the rates that it is charged for electric power or the amount of ad valorem taxes assessed against its property shall be increased or decreased by the utility, without action by the commission, upon verified notice to the commission 30 days prior to its implementation of the increase or decrease that the rates charged by the supplier of the electric power or the taxes imposed by the governmental body have changed. The new rates authorized shall reflect the amount of the change of the ad valorem taxes or rates imposed upon the utility by the governmental agency, other utility, or supplier of electric power. The approved rates of any utility shall be automatically increased, without hearing, upon verified notice to the commission 30 days prior to implementation of the increase that costs have been incurred for water-quality testing required by the Department of Environmental Regulation. The new rates authorized shall reflect, on an amortized basis, the cost of, or the amount of change in the cost of, required water-quality testing performed by laboratories approved by the Department of Environmental Regulation for that purpose. The new rates, however, shall not reflect the costs of any required water-quality testing already included in a utility's rates. A utility may not use this procedure to increase its rates as a result of water-quality testing or an increase in the cost of purchased water services, sewer services, or electric power or in assessed ad valorem taxes, which increase was initiated more than 12 months before the filing by the utility. The provisions of this subsection do not prevent a utility from seeking a change in rates pursuant to the provisions of subsection (2).

(c) Before implementing a change in rates under this subsection, the utility shall file an affirmation under oath as to the accuracy of the figures and calculations upon which the change in rates is based, stating that the change will not cause the utility to exceed the range of its last authorized rate of return. Whoever makes a false statement in the affirmation required hereunder, which statement he does not believe to be true in regard to any material matter, is guilty of a felony of the third degree, punishable as provided in s 775 082, s 775 083, or s 775 084.

(d) If, within 15 months after the filing of a utility's annual report required by s 367 121, the commission finds that the utility exceeded the range of its last authorized rate of return after an adjustment in rates as authorized by this subsection was implemented within the year for which the report was filed or was implemented in the preceding year, the commission may order the utility to refund the difference to the ratepayers and adjust rates accordingly. This provision shall not be construed to require a bond or corporate undertaking not otherwise required.

(e) Notwithstanding anything herein to the contrary, a utility may not adjust its rates under this subsection more than two times in any 12-month period. For the purpose of this paragraph, a combined application or simultaneously filed applications that were filed under the provisions of paragraphs (a) and (b) shall be considered one rate adjustment.

(f) The commission may regularly, not less often than once each year, establish by order a leverage scale or scales that reasonably reflect the range of returns on common equity for an average water or sewer utility and which, for purposes of this section, shall be used to calculate the last authorized rate of return for any utility which otherwise would have no established rate of return. In any other proceeding in which an authorized rate of return is to be established, a utility, in lieu of presenting evidence on its rate of return on common equity, may move the commission to adopt the range of rates of return on common equity that has been established under this paragraph.

(5) An application for a rate change must be accompanied by a fee as provided by s 367 141, except that no fee shall be required for an application for a rate change made pursuant to subsection (4).
a governmental agency, or from a utility or consumer who would be substantially affected by the requested certification, a written objection requesting a proceeding pursuant to s. 120.57, the commission shall order such proceeding conducted in or near the territory sought to be deleted, if feasible. If any consumer, utility, or governmental agency or the public counsel requests a public hearing on the application, such hearing shall, if feasible, be held in or near the territory sought to be deleted. The transcript of such hearing and any material submitted at or before the hearing shall be considered as part of the record of the application and any proceeding related thereto.

5. The commission may authorize the deletion of territory in whole or in part if in the public interest.

367.061 Extension of certificate.—

(1) A utility may extend its service outside the territory described in its certificate if the extension does not involve territory that is described in the certificate of an organizationally unrelated utility that is served by a governmental agency, or that is receiving similar service from any other utility or governmental agency.

(2) Proposed extensions of service other than as authorized in subsection (1) shall not be commenced until the utility first obtains for such extensions an amended certificate.

(3) A utility proposing to extend service in accordance with subsection (1) must complete all noticing requirements in the manner prescribed by s. 367.041(4) at least 30 days before commencing construction of the proposed extension.

(a) If at the end of the 30 days following the completion of all notifying requirements the commission has not received a written objection to the extension, the utility may commence construction and provide service in the territory for which notice was given.

(b) If an objection is received, the matter will be disposed of in accordance with s. 367.051(2) and (3).

(4) An application to amend a certificate shall be made at any time within 1 year following notice as required in subsection (3), unless for good cause the commission extends such time for application. The application shall contain a description of all additional territory served. The commission shall issue an amended certificate describing all territory which it theretofore been authorized to serve, together with the additional territory served by such extension.

(5) An application made pursuant to this section shall be accompanied by a fee as provided by s. 367.141.

367.071 Sale, assignment, or transfer of certificate, facilities, or control.—

(1) No utility shall sell, assign, or transfer its certificate, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest.

(2) An application for proposed sale, assignment, or transfer shall be accompanied by a fee as provided by s. 367.141. No fee is required to be paid by a governmental agency that is the buyer, assignee, or transferee.

(3) An application shall be disposed of as provided in s. 367.051, except that:

(a) The sale or transfer of a certificate or facilities to a governmental agency shall be approved as a matter of right, however, the governmental agency shall, prior to taking any official action, obtain from the commission with respect to the authority or facilities to be sold or transferred the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction.

(b) When paragraph (a) does not apply, the commission shall amend the certificate as necessary to reflect the change resulting from the sale, assignment, or transfer.

(c) The commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof, except for any sale, assignment, or transfer to a governmental agency.

367.081 Rates; procedure for fixing and changing.—

(1) Except as provided in subsection (4), rates and charges being charged and collected by a utility shall be changed only by approval of the commission.

(2) 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. 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. Contributions-in-aid-of-construction include any amount or item of money, services, or property received by a utility from any person or governmental agency, 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 utilized to offset the acquisition, improvement, or construction costs of the utility property, facilities, or equipment used to provide utility services to the public. The commission shall also consider the investment of the utility in property re-
(6) Nothing in this section shall be construed to prohibit the commission from authorizing interim rates for a utility which does not have an authorized rate of return previously established by the commission.

History.--s 22, ch 90-97; s 3, ch 81-318; ss 2, 9, 15 ch 82-25.

Note.--Repealed effective October 1, 1989 by s 2, ch 81-318 and scheduled for review pursuant to s 116.111 in advance of that date. Express October 1, 1985 pursuant to s 15 ch 82-25, and is scheduled for review pursuant to s 116.111 in advance of that date.

367.082 Limited proceedings.--Upon petition or by its own motion, the commission may conduct limited proceedings to consider, and act upon, any matter within its jurisdiction, including any matter the resolution of which requires a utility to adjust its rates. The commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other related matters. However, unless the issue of rate of return is specifically addressed in the limited proceeding, the commission shall not adjust rates if the effect of the adjustment would be to change the last authorized rate of return.

History.--s 8 ch 54-149.

Note.--Expires October 1, 1985 pursuant to s 8 ch 54-149 and is scheduled for review pursuant to s 116.111 in advance of that date.

367.083 Determination of official date of filing.--Within 30 days after receipt of an application, rate request, or other written document for which an official date of filing is to be established, the commission or its designee shall either determine the official date of filing or issue a statement of deficiencies to the applicant, specifically listing why said applicant has failed to meet the minimum filing requirements. Such statement of deficiencies shall be binding upon the commission to the extent that, once the deficiencies in the statement are satisfied, the official date of filing shall be promptly established as provided herein. Thereafter, within 15 days after the applicant indicates to the commission that it believes that it has met the minimum filing requirements, the commission or its designee shall either determine the official date of filing or issue another statement of deficiencies, specifically listing why the requirements have not been met, in which case this procedure shall be repeated until the applicant meets the minimum filing requirements and the official date of filing is established. When a petition initiates a proceeding, the official date of filing shall be the date upon which the order initiating the proceeding is issued.

History.--s 26 ch 80-90 ss 2, 3 ch 81-318.

Note.--Repealed effective October 1, 1989 by s 2, ch 81-318 and scheduled for review pursuant to s 116.111 in advance of that date.

367.091 Rates; new class of service.--If any request for service of a utility shall be for a new class of service not previously approved, the utility may furnish the new class of service and fix and charge just, reasonable, and compensatory rates or charges therefor. A schedule of rates or charges so fixed shall be filed with the commission within 10 days after the service is furnished. The commission may approve such rates or charges as filed or may approve such other rates or charges for the new class of service which it finds are just, reasonable, and compensatory.

History.--s 1 ch 71-278 s 3 ch 76-108 s 1 ch 77-457 s 53 ch 78-95 ss 12, 25 ch 80-90 ss 2, 3 ch 81-318.

Note.--Repealed effective October 1, 1989 by s 2, ch 81-318 and scheduled for review pursuant to s 116.111 in advance of that date.

367.10 Charges for service availability.--

(1) The commission, by rule, may set standards for service-availability charges and service-availability conditions. Charges and conditions made by a utility shall be just and reasonable. The commission shall, upon request or upon its own motion, investigate agreements or proposals for charges and conditions to be made by a utility for service availability. The commission shall set just and reasonable charges and conditions for service availability.

(2) An application for approval of charges and conditions for service availability shall be accompanied by a fee as provided by s 367.141.

History.--s 1 ch 71-278 s 3 ch 76-108 s 1 ch 77-457 s 53 ch 78-95 ss 13, 25, 26 ch 80-90 ss 2, 3 ch 81-318.

Note.--Repealed effective October 1, 1989 by s 2, ch 81-318 and scheduled for review pursuant to s 116.111 in advance of that date.

367.111 Service.--

(1) Each utility shall provide service to the territory described in its certificate within a reasonable time. If the commission finds that any utility has failed to provide service to any person reasonably entitled thereto, or finds that extension of service to any such person could be accomplished only at an unreasonable cost and that addition of the territory to that of another utility company is economical and feasible, it may amend the certificate to delete the territory not served or not properly served by the utility, or it may rescind the certificate. If utility service has not been provided to any part of the territory which a utility is authorized to serve, whether or not there has been a demand for such service, within 5 years after the date of authorization for service to such part, such authorization may be reviewed and amended or revoked by the commission.

(2) Each utility shall provide to each person reasonably entitled thereto such safe, efficient, and sufficient service as is prescribed by the Florida Safe Drinking Water Act and the Florida Air and Water Pollution Control Act, or rules adopted pursuant thereto, or, if applicable, chapter 17-22, Florida Administrative Code, but such service shall not be less safe, less efficient, or less sufficient than is consistent with the approved engineering design of the system and the reasonable and proper operation of the utility in the public interest.

History.--s 1 ch 71-278 s 3 ch 76-108 s 1 ch 77-457 s 53 ch 78-95 ss 12 ch 79-42 ss 14, 25, 26 ch 80-90 ss 2, 3 ch 81-318.

Note.--Repealed effective October 1, 1989 by s 2, ch 81-318 and scheduled for review pursuant to s 116.111 in advance of that date.

367.121 Powers of commission.--

(1) In the exercise of its jurisdiction, the commission shall have power

(a) To prescribe fair and reasonable rates and charges, classifications, standards of quality and measurements, and to prescribe service rules to be observed by each utility, except to the extent such authority is expressly given to another state agency.

(b) To prescribe, by rule, a uniform system and classification of accounts for all utilities, which rules, among other things, shall establish adequate, fair, and reasonable depreciation rates and charges.
(6) The commission may withhold consent to the operation of any rate request or any portion thereof by filing an order to that effect with the commission clerk within 60 days after the date of filing of the rate request, or within a shorter period established by rule of the commission. The order shall state a reason or statement of good cause for the withholding of consent. The commission shall provide a copy of the order to the utility and all interested persons who have requested notice. Such consent shall not be withheld for a period longer than 8 months following the date of filing. The new rates or all or any portion thereof not consented to may be placed into effect by the utility under a bond or corporate undertaking subject to refund at the expiration of such period upon notice to the commission and upon filing the appropriate tariffs. The commission shall determine whether the corporate undertaking may be filed in lieu of the bond. The utility shall keep accurate, detailed accounts of all amounts received because of such rates becoming effective under bond or corporate undertaking subject to refund, specifying by whom and in whose behalf such amounts were paid. In its final order relating to such rate request, the commission shall direct the utility to refund, with interest at a fair rate to be determined by the commission in such manner as it may direct, such portion of the increased rates which are found not to be justified and which are collected during the periods specified. The commission shall provide for the disposition of any funds not refunded; but in no event shall such funds accrue to the benefit of the utility. The commission shall take final action on the docket and enter its final order within 12 months of the official date of filing.

Note.--Repealed effective October 1, 1999 by s 2, ch 91-318 and scheduled for review pursuant to s 11.61 in advance of that date. Effective October 1, 1999 pursuant to s 1, ch 92-25 and is scheduled for review pursuant to s 11.61 in advance of that date.

1367.082 Interim rates; procedure.--

(1) The commission may, during any proceeding for a change of rates, upon its own motion, upon petition from any party, or by a tariff filing of a utility or a regulated company, authorize the collection of interim rates until the effective date of the final order. Such 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 shall demonstrate that the utility or the regulated company is earning outside the range of reasonableness on rate of return calculated in accordance with subsection (5).

(2)(a) In a proceeding for an interim increase in rates, the commission shall authorize, within 60 days of filing for such relief, the collection of rates sufficient to earn the minimum of the range of rate of return calculated in accordance with paragraph (5)(b)2. The difference between the interim rates and the previously authorized rates shall be collected under bond or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(b) In a proceeding for an interim decrease in rates, the commission shall authorize, within 60 days of filing for such relief, the continued collection of the previously authorized rates, however, revenues collected under those rates sufficient to reduce the achieved rate of return to the maximum of the rate of return calculated in accordance with subsection (5) shall be placed under bond or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(c) The commission shall determine whether corporate undertaking may be filed in lieu of the bond.

(3) In granting such relief, the commission may, in an expedited hearing but within 60 days of the commencement of the proceeding, upon petition or upon its own motion, preclude the recovery of any extraordinary or imprudently incurred expenditures or, for good cause shown, increase the amount of the bond or corporate undertaking.

(4) Any refund ordered by the commission shall be calculated to reduce the rate of return of the utility or regulated company during the pendency of the proceeding to the same level within the range of the newly authorized rate of return which is found fair and reasonable on a prospective basis, but the refund shall not be in excess of the amount of the revenues collected subject to refund and in accordance with paragraph (2)(b). In addition, the commission may require interest on the refund at a rate established by the commission.

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

(b) For purposes of this subsection "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 shall be calculated by applying appropriate adjustments consistent with those which were used in the most recent rate case of the utility or regulated company and annualizing any rate changes occurring during such period.

2 Required rate of return shall be 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 rate case of the utility or regulated company.

3 In a proceeding for an interim increase, the term "last authorized rate of return on equity" used in subparagraph 2 means the minimum of the range of the last authorized rate of return on equity established in the most recent rate case of the utility or regulated company. In a proceeding for an interim decrease, the term "last authorized rate of return on equity" used in subparagraph 2 means the maximum of the range of the last authorized rate of return on equity established in the most recent rate case of the utility or regulated company.
chase at wholesale is made of any water or sewer service and a tax is paid or payable thereon by the selling utility and the utility purchasing such water or sewer service resells the same directly to customers, the purchasing utility shall be entitled to, and shall receive, credit on such taxes as may be due by it under this section to the extent of the tax paid or payable upon such water or sewer service by the utility from whom such purchase was made. All such tax payments and penalties shall be deposited in accordance with ss. 350.1131 to 350.1134.

A receiver operating such utility shall be deemed to be the interim rates of the receiver. Any notice given by such utility or counties in which the utility is located and to the commission under subsection (1) is sufficient cause for revocation, suspension, or revocation of the certificate of the utility as of the date of such notice. A receiver operating such utility shall be considered to hold a temporary authorization to operate the utility until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service.

367.158 Public utility records; confidentiality.—
(1) The commission shall continue to have reasonable access to all utility records. Upon request of the utility, any records received by the commission which are shown to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1).

(2) In any docket or proceeding before the commission, the commission shall issue protective orders protecting a public utility from discovery of proprietary confidential business information upon a showing by the utility that such protection is necessary. However, if the commission determines that discovery of proprietary confidential business information is necessary to protect the public interest, the commission shall enter an order limiting such discovery in the manner provided for in Rule 1.280 of the Florida Rules of Civil Procedure. Such proprietary confidential business information shall be exempt from s. 119.07(1).

(3) Proprietary confidential business information includes, but is not limited to-
(a) Trade secrets
(b) Internal auditing controls and reports of internal auditors
(c) Security measures, systems, or procedures
(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the utility to contract for services on favorable terms
(e) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities

367.161 Penalties.—
(1) If any utility, by any authorized officer, agent, or employee, knowingly refuses to comply with, or willfully violates any provision of this chapter or any lawful rule or order of the commission, such utility shall incur a penalty for each such offense of not more than $5,000. To be fixed, imposed, and collected by the commission. However, any penalty assessed by the commission for a violation of s. 367.111(2) shall be reduced by any penalty assessed by any other state agency for the same violation. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the utility, enforceable by the commission as statutory lien under chapter 85. The proceeds from the enforcement of any such lien shall be deposited into the General Revenue Fund.

2(2) The commission has the power to impose upon any entity that is subject to its jurisdiction under this chapter and that is found to have refused to comply with or to have willfully violated, any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than $5,000, which penalty shall be fixed, imposed, and collected by the commission or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by it. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85. The collected penalties shall be deposited into the General Revenue Fund unallocated.
(c) To require such regular or emergency reports from a utility, including, but not limited to, financial reports, as the commission deems necessary and, if the commission finds a financial report to be incomplete, incorrect, or inconsistent with the uniform system and classification of accounts, to require a new report or a supplemental report, either of which the commission may require to be certified by an independent certified public accountant licensed under chapter 473.

(d) To require repairs, improvements, additions, and extensions to any facility, or to require the construction of a new facility, if reasonably necessary to provide adequate and proper service to any person entitled to service or if reasonably necessary to provide any prescribed quality of service, except that no utility shall be required to extend its service outside the geographic territory described in its certificate, or make additions to its plant or equipment to serve outside such territory, unless the commission first finds that the utility is financially able to make such additional investment without impairing its capacity to serve its existing customers.

(e) To employ and fix the compensation for such examiners and technical, legal, and clerical employees as it deems necessary to carry out the provisions of this chapter.

(f) To adopt, by affirmative vote of a majority of the commission, rules reasonably necessary and appropriate for the administration and enforcement of this chapter.

(g) To exercise all judicial powers, issue all writs, and do all things necessary or convenient to the full and complete exercise of its jurisdiction and the enforcement of its orders and requirements, and

(h) To order interconnections of service or facilities between utilities, and to approve any plant capacity charges or wholesale service charges or rates related thereto, provided the commission first finds that the utility is financially able to make such additional investment as is required without impairing its capacity to serve its existing customers.

(2) The commission or its duly authorized representatives may, during all reasonable hours, enter upon any premises occupied by any utility and set up and use thereon any necessary apparatus and appliance for the purpose of making investigations, inspections, examinations, and tests and exercising any power conferred by this chapter. Such utility shall have the right to be notified of and be represented at the making of such investigations, inspections, examinations, and tests.

367.122 Examination and testing of meters.—

(1) The commission may provide for the examination and testing of all meters used for measuring any product or service of a utility.

(2) Any customer or user may have any such meter tested by the utility upon payment of the fee fixed by the commission.

(3) The commission shall establish reasonable fees to be paid for testing such meters on the request of the customers. The fee shall be paid by the customer or user at the time of his request. However, the fee shall be paid by the utility and repaid to the customer or user if the meter is found defective or incorrect to the disadvantage of the customer or user in excess of the degree or amount of tolerance customarily allowed for such meters, or as may be provided for in rules and regulations of the commission. No fee may be charged for any such testing done by the commission or its representatives.

(4) The commission may purchase materials, apparatus, and standard measuring instruments for such examinations and tests.

367.123 Service for resale.—The commission may require a utility to provide service for resale. However, before requiring the provision of service, the commission shall first find that the utility is financially able to make such additional investment as is required without impairing its capacity to serve its existing customers. Any utility which provides service for resale shall provide such service upon terms and conditions established by the commission, and no utility shall discontinue such service without the approval of the commission. In the event a governmental agency voluntarily enters into an agreement for resale, such agreement shall provide that the service will not be discontinued without 90 days' notice being given to the purchaser prior to discontinuing such service. Nothing contained herein shall be construed to prohibit the governmental agency from requiring adequate security being given to such agency to ensure payments required in the agreement.

367.141 Fees.—An application by a utility, made pursuant to the provisions of s. 367.041, s. 367.055, s. 367.061, s. 367.071, s. 367.081, s. 367.101, or s. 367.171, shall be accompanied by a fee to be set by commission rule and to be based upon the existing or proposed capacity of the system, or extension, or deletion, with the following limitations:

(1) From 1 to 999 persons, not more than $150.

(2) From 1,000 to 4,999 persons, not more than $900.

(3) From 5,000 to 9,999 persons, not more than $1,500.

(4) Ten thousand or more persons, not more than $2,250.

Such fees shall be placed in the Public Service Regulatory Trust Fund under the provisions of chapter 350.

367.151 Gross receipts tax.—Each utility shall pay to the commission a regulatory fee in the amount set forth in s. 350.113. Each governmental agency to which ownership or control of a utility is transferred shall not be liable for any fees owed the commission by the utility as of the date of transfer. However, whenever a pur-
fective in a county of this state upon the adoption of a resolution by the board of county commissioners of such county, or, in counties operating under a countywide charter, by the appropriate board, declaring that such county is subject to the provisions of this chapter. Any board of county commissioners which adopts such a resolution shall immediately notify the commission of its adoption and submit the resolution to the commission. A county, after 4 continuous years under the jurisdiction of the commission, may by resolution or ordinance rescind any prior resolution or ordinance imposing commission jurisdiction and thereby exclude itself from the provisions of this chapter, except that the county may not exclude itself from the provisions of this section.

(2)(a) Within 30 days after this chapter becomes applicable to a county, each utility shall register by filing with the commission a written statement setting forth the full legal name of the utility, its mailing address, and a brief description of its area of service.

(b) On the day this chapter becomes applicable to any county, any utility engaged in the operation or construction of a system shall be entitled to receive a certificate for the area served by such utility on the day this chapter becomes applicable to it. Within 90 days after the day this chapter becomes applicable to it, the utility shall make application for a certificate by filing with the commission:

1. A map of its existing system or system under construction.
2. A description of the area served by the system, and
3. A tariff listing all rates and charges and such other financial information as may be required by the commission.

Such application shall be accompanied by a fee as provided by s 367.141.

(c) Before the commission issues a certificate under paragraph (b), it may establish the amount of money prudently invested in property of the utility, which property is used and useful in the public service, may establish other elements of the rate base, and may set and approve rates pursuant to s 367.081.

(3) In consideration of the variance of powers, duties, responsibilities, population, and size of municipalities of the several counties and in consideration of the fact that every county varies from every other county and thereby affects the functions, duties, and responsibilities required of its county officers and the scope of responsibilities which each county may, at this time, undertake, the Counties of Alachua, Baker, Bradford, Calhoun, Charlotte, Collier, Columbia, Dade, DeSoto, Dixie, Escambia, Gadsden, Gilchrist, Gladis, Gulf, Hamilton, Hardee, Hendry, Highlands, Hillsborough, Holmes, Indian River, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Okaloosa, Okeechobee, Polk, St. Johns, Sarasota, Sumter, Suwannee, Taylor, Union, Wakulla, and Washington are excluded from the provisions of this chapter until such time as the board of county commissioners of any such county, acting pursuant to the provisions of subsection (1), makes this chapter applicable to such county or until the Legislature, by appropriate act, removes one or more of such counties from this exclusion.

(4) As of the day a utility is no longer regulated by the commission under this chapter, each such utility which is engaged in the operation or construction of a system shall be entitled to receive from the county in which it is located and operating a certificate for each area for which such utility held a certificate from the commission on the day the utility became subject to regulation by the county. The utility will make application by filing with the governing body of the county:

(a) A map of its existing system or system under construction.
(b) A certified copy of the certificate issued by the commission, including a legal description of the area for which the certificate was issued.
(c) A tariff, listing all rates and charges then in effect, which shall remain in effect until thereafter lawfully changed.
(d) A copy of the operating regulations and procedures of the utility then in effect, which shall remain in effect until thereafter lawfully changed, and
(e) The then-current rate base of the utility, which shall then continue to be the rate base of the utility until thereafter lawfully changed.

(5) 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.

(6) Any county in which utilities as herein defined were regulated by the commission on or after January 1, 1980, which subsequently cease to be so regulated, shall within 90 days of the cessation of commission regulation, adopt and follow as minimum standards of regulation the provisions of s 367.081, except for paragraph (4)(a), and s 367.082, except that the word "commission" shall be read as "the governing body of such county" when the context implies or admits. The authorized rate of return shall be no less than the weighted cost of the capital of the utility, including debt and equity.
A bill to be entitled

An act relating to the regulation of water and
sewer systems; amending s. 367.011, F.S.;
revising how ch. 367, F.S., may be cited;
amending s. 367.021, F.S.; revising the term
"utility," as used in ch. 367, F.S., to mean a
water or wastewater utility; revising and
adding other definitions of terms used in ch.
367, F.S.; amending s. 367.022, F.S., relating
to exemptions; conforming terminology used;
exempting wastewater treatment plants operated
exclusively for disposing of industrial
wastewater from ch. 367, F.S.; amending s.
367.031, F.S.; requiring utilities to obtain
certificates of authorization prior to being
issued permits by the Department of
Environmental Regulation or a water management
district; requiring the commission to grant or
deny an application within 90 days; creating s.
367.045, F.S.; providing application and
amendment procedures that utilities must follow
when applying for an original or amended
certificate of authorization; providing for
objections and hearings thereon; amending s.
367.061, F.S., relating to extensions of
certificates; revising cross-references;
reducing the time that a utility has to amend a
certificate; amending s. 367.071, F.S.;
providing a penalty if a transfer occurs prior
to commission approval; conforming terminology
used; providing for the discontinuation and

CODING: Words stricken are deletions; words underlined are additions.
refund of interim rates; requiring that systems obtained through foreclosure continue providing service; conforming terminology used; amending s. 367.081, F.S., requiring the commission to consider a utility's investment in land acquired or facilities constructed or to be constructed in fixing and changing rates; authorizing the commission to project certain data when establishing initial rates; prohibiting a utility from using the index procedures during a rate proceeding; revising the noticing requirement; conforming terminology used; creating s. 367.0814, F.S.; providing procedures to be used when a utility requests staff assistance in changing its rates or charges; amending s. 367.082, F.S., relating to interim rates; providing for collection under escrow or letter of credit; providing for the discontinuance and refund of interim rates; amending s. 367.083, F.S.; changing the time within which the commission must determine the official date of filing or issue another statement of deficiencies; creating s. 367.084, F.S.; requiring that certain orders adjusting rates that are issued by the commission be reduced to writing; providing for notice; amending s. 367.091, F.S.; providing for applications for new classes of services; prohibiting a utility from collecting rates or charges that have not been approved; amending s. 367.101, F.S., requiring the commission to

CODING: Words stricken are deletions; words underlined are additions.
set just and reasonable charges for services
and conditions for service availability,
revising a cross-reference; amending s.
367.111, F.S.; requiring the commission to
reduce a utility's return on equity if certain
state standards are not met; amending s.
367.122, F.S.; revising the manner in which
fees are paid; providing for the first meter
test to be provided free of charge; creating s.
367.145, F.S.; providing for regulatory
assessment and application fees; providing for
disposition and use of fees; amending s.
367.156, F.S.; revising provisions relating to
the confidentiality of certain public utility
records; providing for proprietary confidential
business information; exempting said section
from review under the Open Government Sunset
Review Act; amending s. 367.171, F.S., relating
to effectiveness of chapter in certain
counties; revising a cross-reference; revising
the list of counties excluded from ch. 367,
F.S.; amending s. 367.182, F.S., relating to
applicability of the act; deleting provisions
relating to certificate renewal; repealing s.
367.041, F.S., relating to applications for
certificates; repealing s. 367.051, F.S.,
relating to issuance of certificates; repealing
s. 367.055, F.S., relating to applications for
deletion of territory; repealing s. 367.141,
F.S., relating to fees; repealing s. 367.151,
F.S., relating to gross receipts tax; reviving

CODING: Words stricken are deletions; words underlined are additions.
and readopting ss. 367.011-367.031, 367.061-367.123, 367.156-367.182, F.S., as amended, notwithstanding their scheduled repeal by chs. 81-318, 82-25, and 84-149, Laws of Florida, October 1, 1989; repealing ss. 367.011-367.182, F.S., October 1, 1999, and providing for review of such sections in advance of that date; providing an effective date.

Be It Enacted by the Legislature of the State of Florida.

Section 1. Subsection (1) of section 367.011, Florida Statutes, is amended to read:

367.011 Jurisdiction; legislative intent.--
(1) This chapter may be cited as the "Water and Wastewater Sewer System Regulatory Law."

Section 2. Section 367.021, Florida Statutes, is amended to read:

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

Commission means the Florida Public Service Commission.

(1) "Certificate" means a document issued by the commission authorizing a utility to provide service in a specific territory.

(2) "Commission" means the Florida Public Service Commission.

(3) "Contribution-in-aid-of-construction" means any amount or item of money, services, or property received by a utility, from any person or governmental agency, any portion of which is provided at no cost to the utility, which

CODING: Words stricken are deletions; words underlined are additions.
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.

(4) "Corporate undertaking" means the unqualified guarantee of a utility to pay a refund and pay interest connected therewith which may be ordered by the commission at such time as the obligation becomes fixed and final.

(5) "Domestic wastewater" means wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

(6) "Effluent reuse" means the use of wastewater after the treatment process, generally for reuse as irrigation water or for in-plant use.

(7) "Governmental authority" means a political subdivision, as defined by s. 1.01(9).

(8) "Industrial wastewater" means wastewater not otherwise defined as domestic wastewater, including runoff and leachate from areas that receive pollutants associated with industrial or commercial storage, handling, or processing.

(9) "Official date of filing" means the date upon which it has been determined, pursuant to s. 367.083, by the commission that the utility has filed with the clerk the minimum filing requirements as established by rule of the commission.

(10) "Service area" means the geographical area described in a certificate, which may be within or without the boundaries of an incorporated municipality and may include areas in more than one county.

(11) "System" means facilities and land used or useful in providing service and, upon a finding by the commission,
may include a combination of functionally related facilities and land.

(12) "Utility" means a water or wastewater sewer utility and, except as provided in s. 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater sewer service to the public for compensation.

(13) "Wastewater" means the combination of the liquid and water-carried pollutants from a residence, commercial building, industrial plant, or institution, together with any groundwater, surface runoff, or leachate that may be present.

(4) "System" means facilities and property used or useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities and property.

(5) "Governmental agency" means a political subdivision authorized to provide water or sewer service.

(6) "Territory" means the geographical area described in a certificate, which may be within or without the boundaries of an incorporated municipality and may include areas in more than one county.

(7) "Official date of filing" means the date upon which it has been determined, pursuant to s. 367.003, by the commission or its designee that the utility has filed with the clerk the minimum filing requirements as established by rule of the commission.

(8) "Corporate undertaking" means the unqualified guarantee of a utility to pay a refund and any interest connected therewith which may be ordered by the commission at such time as the obligation becomes fixed and final.

CODING: Words stricken are deletions; words underlined are additions.
Section 3. Subsections (2) and (8) of section 367.022, Florida Statutes, are amended, and subsection (9) is added to said section, to read:

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

(2) Systems owned, operated, managed, or controlled by governmental authorities agencies;

(8) Any person who resells water or wastewater sewer 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 s. 367.122.

(9) Wastewater treatment plants operated exclusively for disposing of industrial wastewater.

Section 4. Section 367.031, Florida Statutes, is amended to read:

367.031 Certificate.—Each utility subject to the jurisdiction of the commission must obtain from the commission a certificate of authorization to provide water or wastewater service or an order recognizing that the utility is exempt from regulation as provided by s. 367.022. A utility must obtain a certificate from the commission prior to being issued a permit by the Department of Environmental Regulation for the construction of a new water or wastewater facility or prior to being issued a consumptive use or drilling permit by a water management district. The commission shall grant or deny an
application for a certificate within 90 days after the
official filing date of the completed application or the
application will be deemed granted. Prior-to-the-issuance-to
a utility-of-a-permit-by-the-Department-of-Environmental
Regulation-for-the-construction-of-a-new-water-or-sewer
facility-the-utility-shall-obtain-a-certificate-authorizing
it-to-provide-service---Each-utility-subject-to-the
commission's-jurisdiction-shall-possess-a-current-certificate;
Section 5. Section 367.045, Florida Statutes, as
created to read:
367.045 Certificate; application and amendment
procedures.—
(1) When a utility applies for an initial certificate
of authorization from the commission, it shall:
(a) Provide notice of the actual application filed by
mail or personal delivery to the governing body of the county
or city affected, to the Public Counsel, to the commission,
and to such other persons and in such other manner as may be
prescribed by commission rule;
(b) Provide all information required by rule or order
of the commission, which information may include a detailed
inquiry into the ability of the applicant to provide service,
the area and facilities involved, the need for service in the
area involved, and the existence or nonexistence of service
from other sources within geographical proximity to the area
in which the applicant seeks to provide service;
(c) File with the commission schedules showing all
rates, classifications, and charges for service of every kind
proposed by it and all rules, regulations, and contracts
relating thereto.

CODING: Words struck out are deletions; words underlined are additions.
(d) File the application fee required by s. 367.145;

and

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

(2) A utility may not delete or extend its service outside the area described in its certificate of authorization, except in accordance with s. 367.061, until it has obtained an amended certificate from the commission. When a utility applies for an amended certificate of authorization from the commission, it shall:

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

(b) Provide all information required by rule or order of the commission, which information may include a detailed inquiry into the ability or inability of the applicant to provide service, the need or lack of need for service in the area that the applicant seeks to delete or add; the existence or nonexistence of service from other sources within geographical proximity to the area that the applicant seeks to delete or add, and a description of the area sought to be deleted or added to the area described in the applicant's current certificate;

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

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

CODING: Words stricken are deletions; words underlined are additions.
(e) File the application fee required by s. 367.145; and

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

(3) If, within 30 days after the last day that notice was mailed or published by the applicant, the commission does not receive written objection to the notice, the commission may dispose of the application without hearing. If the applicant is dissatisfied with the disposition, it may bring a proceeding under s. 120.57.

(4) If, within 30 days after the last day that notice was mailed or published by the applicant, the commission receives from the Public Counsel, a governmental authority, or a utility or consumer who would be substantially affected by the requested certification or amendment a written objection requesting a proceeding pursuant to s. 120.57, the commission shall order such proceeding conducted in or near the area for which application is made, if feasible. Notwithstanding the ability to object on any other ground, a county or municipality has standing to object on the ground that the issuance or amendment of the certificate violates established local comprehensive plans developed pursuant to ss. 163.3161-163.3211. If a consumer, utility, or governmental authority or the Public Counsel requests a public hearing on the application, such hearing must, if feasible, be held in or near the area for which application is made; and the transcript of such hearing and any material submitted at or before the hearing must be considered as part of the record of the application and any proceeding related thereto.

CODING: Words stricken are deletions; words underlined are additions.
(5)(a) The commission may grant or amend a certificate, in whole or in part or with modifications in the public interest, but may not grant authority greater than that requested in the application or amendment thereto and noticed under this section; or it may deny a certificate or amendment to a certificate, if in the public interest. The commission may deny an application for a certificate of authorization for any new Class C wastewater system, as defined by commission rule, if the public can be adequately served by modifying or extending a current wastewater system. The commission may not grant a certificate for a proposed system, or an amendment to a certificate for the extension of an existing system, which will be in competition with, or a duplication of, any other system or portion of a system, unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service.

(b) When granting or amending a certificate, the commission need not consider whether the issuance or amendment of the certificate is inconsistent with the local comprehensive plan of a county or municipality unless a timely objection to the notice required by this section has been made by an appropriate motion or application. If such an objection has been timely made, the commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality.

(6) The revocation, suspension, transfer, or amendment of a certificate is subject to the provisions of this section. The commission shall give 30 days' notice when it initiates any such action.
Section 6. Subsections (3), (4), and (5) of section 367.061, Florida Statutes, are amended to read.

367.061 Extension of certificate --

(3) A utility proposing to extend service in accordance with subsection (1) must complete all noticing requirements in the manner prescribed by s. 367.045(2) at least 30 days before commencing construction of the proposed extension.

(a) If at the end of the 30 days following the completion of all noticing requirements the commission has not received a written objection to the extension, the utility may commence construction and provide service in the territory for which notice was given.

(b) If an objection is received, the matter will be disposed of in accordance with s. 367.045(4) and

(4) An application to amend a certificate must be made at any time within 90 days following notice as required in subsection (3), unless for good cause the commission extends such time for application. The application shall contain a description of all additional territory served. The commission shall issue an amended certificate describing all territory which it had theretofore been authorized to serve, together with the additional territory served by such extension.

(5) An application made pursuant to this section shall be accompanied by a fee as provided by s. 367.145.

Section 7. Section 367.071, Florida Statutes, is amended to read:

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

CODING: Words stricken are deletions; words underlined are additions
(1) No utility shall sell, assign, or transfer its certificate, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest.

(2) The commission may impose a penalty pursuant to s. 367.161 when a transfer occurs prior to approval by the commission. The transferor remains liable for any regulatory assessment fees, fines, or refunds of the utility.

(3) An application for proposed sale, assignment, or transfer shall be accompanied by a fee as provided by s. 367.141. No fee is required to be paid by a governmental agency that is the buyer, assignee, or transferee.

(4) An application shall be disposed of as provided in s. 367.051, except that:

(a) The sale or transfer of a certificate or facilities, in whole or part, to a governmental authority shall be approved as a matter of right, however, the governmental authority shall, prior to taking any official action, obtain from the utility or commission with respect to the authority or facilities to be sold or transferred the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction.

Any request for rate relief pending before the commission at the time of sale is deemed to have been withdrawn. Interim rates, if previously approved by the commission, must be discontinued, and any money collected pursuant to interim rate relief must be refunded to the customers of the utility with interest.
311-1529-89

(b) When paragraph (a) does not apply, the commission shall amend the certificate as necessary to reflect the change resulting from the sale, assignment, or transfer.

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

(6) Any person, company, or organization that obtains ownership or control over any system, or part thereof, through foreclosure of a mortgage or other encumbrance, shall continue service without interruption and may not remove or dismantle any portion of the system previously dedicated to public use without the express approval of the commission. This provision may be enforced by an injunction of a court of competent jurisdiction.

Section 8. Section 367.081, Florida Statutes, is amended to read:

367.081 Rates; procedure for fixing and changing.--

(1) Except as provided in subsection (4), a utility may only charge rates and charges that have been approved by being charged and collected by a utility shall be changed only by approval of the commission.

(2) 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

CODING: Words stricken are deletions; words underlined are additions.
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. 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. Contributions-in-aid-of-construction include any
amount or item of money, services, or property received by a
utility, from any person or governmental agency, 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 utilized to offset the acquisition of
improvement or construction costs of the utility property,
facilities or equipment used to provide utility services to
the public. The commission shall also consider the investment
of the utility in land acquired or facilities constructed or
property required by duly authorized governmental authority 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.

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

(3) The commission, in fixing rates, may determine the
prudent cost of providing service during the period of time
the rates will be in effect following the entry of a final

CODING: Words stricken are deletions; words underlined are additions.
order relating to the rate request of the utility and may use such costs to determine the revenue requirements that will allow the utility to earn a fair rate of return on its rate base.

(4)(a) On or before March 31 of each year, the commission by order shall establish a price increase or decrease index for major categories of operating costs incurred by utilities subject to its jurisdiction reflecting the percentage of increase or decrease in such costs from the most recent 12-month historical data available. The commission by rule shall establish the procedure to be used in determining such indices and a procedure by which a utility, without further action by the commission, or the commission on its own motion, may implement an increase or decrease in its rates based upon the application of the indices to the amount of the major categories of operating costs incurred by the utility during the immediately preceding calendar year, except to the extent of any disallowances or adjustments for those expenses of that utility in its most recent rate proceeding before the commission. The rules shall provide that, upon a finding of good cause, including inadequate service, the commission may order a utility to refrain from implementing a rate increase hereunder unless implemented under a bond or corporate undertaking in the same manner as interim rates may be implemented under s. 367.082. A utility may not use this procedure during the pendency of a rate proceeding, or to increase any operating cost for which an adjustment has been or could be made under paragraph (b), or to increase its rates by application of a price index other than the most recent price index authorized by the commission at the time of filing.

CODING: Words stricken are deletions; words underlined are additions.
(b) The approved rates of any utility which receives all or any portion of its utility service from a governmental agency or from a water or wastewater sewer utility regulated by the commission and which redistributes that service to its utility customers shall be automatically increased or decreased without hearing, upon verified notice to the commission 45 to 90 days prior to its implementation of the increase or decrease that the rates charged by the governmental agency or other utility have changed. The approved rates of any utility which is subject to an increase or decrease in the rates that it is charged for electric power or the amount of ad valorem taxes assessed against its used and useful property shall be increased or decreased by the utility, without action by the commission, upon verified notice to the commission 45 to 90 days prior to its implementation of the increase or decrease that the rates charged by the supplier of the electric power or the taxes imposed by the governmental authority body have changed. The new rates authorized shall reflect the amount of the change of the ad valorem taxes or rates imposed upon the utility by the governmental authority agency, other utility, or supplier of electric power. The approved rates of any utility shall be automatically increased, without hearing, upon verified notice to the commission 45 to 90 days prior to implementation of the increase that costs have been incurred for water-quality or wastewater-quality testing required by the Department of Environmental Regulation. The new rates authorized shall reflect, on an amortized basis, the cost of, or the amount of change in the cost of, required water-quality or wastewater-quality testing performed by laboratories approved by the Department of Environmental Regulation for that purpose. The
new rates, however, shall not reflect the costs of any required water-quality or wastewater-quality testing already included in a utility's rates. A utility may not use this procedure to increase its rates as a result of water-quality or wastewater-quality testing or an increase in the cost of purchased water services, sewer services, or electric power or in assessed ad valorem taxes, which increase was initiated more than 12 months before the filing by the utility. The provisions of this subsection do not prevent a utility from seeking a change in rates pursuant to the provisions of subsection (2).

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

(d) If, within 15 months after the filing of a utility's annual report required by s. 367.121, the commission finds that the utility exceeded the range of its last authorized rate of return on equity after an adjustment in rates as authorized by this subsection was implemented within the year for which the report was filed or was implemented in the preceding year, the commission may order the utility to refund, with interest, the difference to the ratepayers and adjust rates accordingly. This provision shall not be
construed to require a bond or corporate undertaking not otherwise required

(e) Notwithstanding anything herein to the contrary, a utility may not adjust its rates under this subsection more than two times in any 12-month period. For the purpose of this paragraph, a combined application or simultaneously filed applications that were filed under the provisions of paragraphs (a) and (b) shall be considered one rate adjustment.

(f) The commission may regularly, not less often than once each year, establish by order a leverage formula or formulae that reasonably reflect the range of returns on common equity for an average water or wastewater utility and which, for purposes of this section, shall be used to calculate the last authorized rate of return on equity for any utility which otherwise would have no established rate of return on equity. In any other proceeding in which an authorized rate of return on equity is to be established, a utility, in lieu of presenting evidence on its rate of return on common equity, may move the commission to adopt the range of rates of return on common equity that has been established under this paragraph.

(5) An application for a rate change must be accompanied by a fee as provided by s. 367.141, except that no fee shall be required for an application for a rate change made pursuant to subsection (4).

(6) The commission may withhold consent to the operation of any rate request or any portion thereof by a vote fixing an order to that effect with the commission clerk within 60 days after the date of filing of the rate request, or within a shorter period established by rule of the commission.
commission. The order shall state a reason or statement of good cause for the withholding of consent. The commission shall provide a copy of the order to the utility and all interested persons who have requested notice. Such consent shall not be withheld for a period longer than 8 months following the date of filing. The new rates or all or any portion thereof not consented to may be placed into effect by the utility under a bond, escrow, or corporate undertaking subject to refund at the expiration of such period upon notice to the commission and upon filing the appropriate tariffs. The commission shall determine whether the corporate undertaking may be filed in lieu of the bond or escrow. The utility shall keep accurate, detailed accounts of all amounts received because of such rates becoming effective under bond, escrow, or corporate undertaking subject to refund, specifying by whom and in whose behalf such amounts were paid. In its final order relating to such rate request, the commission shall direct the utility to refund, with interest at a fair rate to be determined by the commission in such manner as it may direct, such portion of the increased rates which are found not to be justified and which are collected during the periods specified. The commission shall provide, by rule, for the disposition of any funds not refunded, but in no event shall such funds accrue to the benefit of the utility. The commission shall take final action on the docket and enter its final order within 12 months of the official date of filing. Section 9. Section 367.0814, Florida Statutes, is created to read:

367.0814 Rates and charges: requests for staff assistance in changing.—

CODING: Words struck are deletions; words underlined are additions.
The commission may establish rules by which a water and 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.

The official date of filing is established as 30 days after official acceptance by the commission of the application. Upon acceptance, the utility has 30 days to remit a fee as provided by s. 367.145. The commission has 15 months after the official date of filing within which to issue a final order.

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

The utility, in requesting staff assistance, shall agree to accept the final rates and charges approved by the commission unless the final rates and charges produce less revenue than the existing rates and charges.

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 or jurisdiction during the pendency of a staff-assisted rate case, the request for rate relief is deemed to have been withdrawn. Temporary rates, if previously approved, must be discontinued, and any money collected pursuant to the temporary rates must be refunded to the customers of the utility with interest.

Section 10. Subsections (2) and (3) of section 367.082, Florida Statutes, are amended, and subsection (7) is added to said section, to read:

CODING: Words struck are deletions; words underlined are additions.
367.082 Interim rates, procedure.--

(2)(a) In a proceeding for an interim increase in rates, the commission shall authorize, within 60 days of the filing for such relief, the collection of rates sufficient to earn the minimum of the range of rate of return calculated in accordance with subparagraph (5)(b)2. The difference between the interim rates and the previously authorized rates shall be collected under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(b) In a proceeding for an interim decrease in rates, the commission shall authorize, within 60 days of the filing for such relief, the continued collection of the previously authorized rates; however, revenues collected under those rates sufficient to reduce the achieved rate of return to the maximum of the rate of return calculated in accordance with subsection (5) shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(c) The commission shall determine whether corporate undertaking may be filed in lieu of the bond.

(3) In granting such relief, the commission may, in an expedited hearing but within 60 days of the commencement of the proceeding, upon petition or upon its own motion, preclude the recovery of any extraordinary or imprudently incurred expenditures or, for good cause shown, increase the amount of the bond, escrow, letter of credit, or corporate undertaking.

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

Section 11. Section 367.083, Florida Statutes, is amended to read:

367.083 Determination of official date of filing.--Within 30 days after receipt of an application, rate request, or other written document for which an official date of filing is to be established, the commission or its designee shall either determine the official date of filing or issue a statement of deficiencies to the applicant, specifically listing why said applicant has failed to meet the minimum filing requirements. Such statement of deficiencies shall be binding upon the commission to the extent that, once the deficiencies in the statement are satisfied, the official date of filing shall be promptly established as provided herein.

Thereafter, within 20 to 35 days after the applicant indicates to the commission that it believes that it has met the minimum filing requirements, the commission or its designee shall either determine the official date of filing or issue another statement of deficiencies, specifically listing why the requirements have not been met, in which case this procedure shall be repeated until the applicant meets the minimum filing requirements and the official date of filing is established.

When the commission initiates a proceeding, the official date of filing shall be the date upon which the order initiating the proceeding is issued.

Section 12. Section 367.084, Florida Statutes, is created to read:

367.084 Rate adjustment orders.--Any order issued by the commission adjusting general increases or reductions of

CODING: Words stricken are deletions; words underlined are additions.
the rates and charges of any utility or regulated company must
be reduced to writing including any dissenting or concurring
opinions within 20 days after the official vote of the
commission. Within such 20-day period, the commission shall
also mail a copy to the clerk of the circuit court of each
county in which customers of the utility or regulated company
are served who are affected by the rate adjustment, which copy
must be kept on file and made available to the public. The
commission shall notify all parties of record in the
proceeding of the date of such mailing. Such an order is not
considered rendered for purposes of appeal, rehearing, or
judicial review until the date the copies are mailed as
required by this section. This provision does not delay the
effective date of the order. Such an order is considered
rendered on the date of the official vote for the purposes of
s. 367.081(6).

Section 13. Section 367.091, Florida Statutes, is
amended to read:

367.091 Rates, tariffs; new class of service.--
(1) All applications for new rates or changes in rates
must be made to the commission in writing as prescribed by
rule.
(2) Each utility's rates, charges, and customer
service policies must be contained in a tariff approved by and
on file with the commission.
(3) A utility may only impose and collect those rates
and charges approved by the commission for the particular
class of service involved. A change in any rate schedule may
not be made without commission approval.
(4) If any request for service of a utility shall be
for a new class of service not previously approved, the
utility may furnish the new class of service and fix and
charge just, reasonable, and compensatory rates or charges
therefor. A schedule of rates or charges so fixed shall be
filed with the commission within 10 days after the service is
furnished. The commission may approve such rates or charges
as filed or may approve such other rates or charges for the
new class of service which it finds are just, reasonable, and
compensatory.

(5) An application to establish, increase, or change a
rate or charge other than the monthly rates for service
pursuant to s. 367.081 or service availability charges
pursuant to s. 367.101 must be accompanied by a cost
justification. The commission may withhold consent to the
operation of any or all portions of the new rate schedules, by
a vote to that effect within 60 days giving a reason or
statement of good cause for withholding its consent. The
commission shall render its final decision on the application
within 8 months after the official date of filing.

Section 14. Section 367.101, Florida Statutes, is
amended to read:

367.101 Charges for service availability.--
(1) The commission shall set just and reasonable
charges and conditions for service availability. The
commission, by rule, may set standards for, and levels of,
service-availability charges and service-availability
conditions. Such charges and conditions made-by-a-utility
shall be just and reasonable. The commission shall, upon
request or upon its own motion, investigate agreements or
proposals for charges and conditions to-be-made-by-a-utility
for service availability. The commission shall set just and
reasonable-charges-and-conditions-for-service-availability.

CODING: Words stricken are deletions; words underlined are additions.
(2) An application for approval of charges and
conditions for service availability shall be accompanied by a
fee as provided by s. 367.145 sl-367.144.

Section 15. Subsection (2) of section 367.111, Florida
Statutes, is amended to read:

367.111 Service.—

(2) Each utility shall provide to each person
reasonably entitled thereto such safe, efficient, and
sufficient service as is prescribed by the Florida Safe
Drinking Water Act and the Florida Air and Water Pollution
Control Act, or rules adopted pursuant thereto, or, if
applicable, chapter 17-22, Florida Administrative Code; but
such service shall not be less safe, less efficient, or less
sufficient than is consistent with the approved engineering
design of the system and the reasonable and proper operation
of the utility in the public interest. If the commission
finds that a utility has failed to provide its customers with
water that meets the standards promulgated by the Department
of Environmental Regulation, the commission shall reduce the
utility's return on equity until such time as the standards
are met.

Section 16. Subsection (2) of section 367.122, Florida
Statutes, is amended to read:

367.122 Examination and testing of meters.—

(2) Any customer or user may have any such meter
tested by the utility. Current utility customers or users
may, at their discretion, pay upon-payment of the fee fixed by
the commission at the time of the request or have the utility
include the fee with their next regularly scheduled monthly
statements. The first meter test must be performed by the
utility free of charge for current utility customers or users.

Section 17. Section 367.145, Florida Statutes, is created to read:

367.145 Regulatory assessment and application fees.--

(1) The commission shall set, by rule, a regulatory assessment fee that each utility must pay once a year in conjunction with filing its annual financial report required by commission rule. Notwithstanding any provision of law to the contrary, the amount of the regulatory assessment fee may not exceed 4.5 percent of the gross revenues of the utility derived from intrastate business.

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

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

(2) Each utility shall pay an application fee, established by the commission, for an original certificate; an amendment to an existing certificate; a request for rate
relief in accordance with s. 367.081 or s. 367.0811; service
availability charges filed in accordance with s. 367.101, and
when this chapter becomes applicable to a county in accordance
with s. 367.171. The amount of the application fee determined
by the commission may not exceed $4,500 and must be based upon
the existing or proposed capacity of the system, extension, or
deletion. All such fee payments must be deposited in
accordance with s. 350.113.

(3) Fees collected by the commission pursuant to this
section may only be used to cover the cost of regulating water
and wastewater systems. Fees collected by the commission
pursuant to chapters 364 and 366 may not be used to pay the
cost of regulating water and wastewater systems.

Section 18. Section 367.156, Florida Statutes, is
amended to read:

367.156 Public utility records; confidentiality.--

(1) The commission shall continue to have reasonable
access to all utility records, including the records of the
utility's affiliated companies. Upon request of the utility,
any records received by the commission which are shown to be
proprietary-confidential-business-information shall be kept
confidential and shall be exempt from s. 119.07(1).

(2) In any docket or proceeding before the commission,
the commission shall issue protective orders protecting a
public utility from discovery of proprietary-confidential
business information upon a showing by the utility that such
protection is necessary. However, if the commission
determines that discovery of proprietary-confidential business
information is necessary to protect the public interest, the
commission shall enter an order limiting such discovery in the
manner provided for in Rule 1.280 of the Florida Rules of

CODING: Words stricken are deletions; words underlined are additions.
Civil Procedure, for discovery of any matter, not privileged, that is relevant to the subject matter of the docket or proceeding. Such proprietary-confidential-business information shall be exempt from s. 119.07(1).

(3) Upon request, any records received by the commission that are shown, and are determined by the commission, to be proprietary confidential business information are exempt from s. 119.07(1). Upon a showing by a utility or affected person, and a finding by the commission, that such protection is necessary, the commission shall issue a protective order protecting a party from disclosure of proprietary confidential business information and shall designate a manner for handling such information during the course of the proceeding.

Proprietary confidential business information means information, regardless of form or characteristics which is kept in the course of official business, which is owned or controlled by the company, which is intended to be and is treated by the company as private in that the disclosure of the information would cause harm to the ratepayers or the company's business operations, and which has not been disclosed to an unaffiliated person unless disclosed pursuant to a statutory provision or private agreement that provides that the information will not be released to the public.

Proprietary business information includes, but is not limited to:

(a) Trade secrets.

(b) Internal auditing controls and reports of internal auditors.

(c) Security measures, systems, or procedures.
(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the utility to contract for services on favorable terms.

(e) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

(5) Any finding by the commission that records contain proprietary confidential business information is effective for a period set by the commission not exceeding 12 months. At the conclusion of this period, such records are no longer exempt from s. 119.07(1), unless the company shows and the commission finds that the records continue to contain proprietary confidential business information.

(5) This section is not subject to review pursuant to the provisions of s. 119.14.

Section 19. Paragraph (b) of subsection (2) and subsection (3) of section 367.171, Florida Statutes, are amended to read:

367.171 Effectiveness of this chapter.--

(2)

(b) On the day this chapter becomes applicable to any county, any utility engaged in the operation or construction of a system shall be entitled to receive a certificate for the area served by such utility on the day this chapter becomes applicable to it. Within 90 days after the day this chapter becomes applicable to it, the utility shall make application for a certificate by filing with the commission:

1. A map of its existing system or system under construction;

2. A description of the area served by the system; and

CODING: Words stricken are deletions; words underlined are additions.
3. A tariff listing all rates and charges and such other financial information as may be required by the commission.

Such application shall be accompanied by a fee as provided by s. 367.145 ss-367.147.

(3) In consideration of the variance of powers, duties, responsibilities, population, and size of municipalities of the several counties and in consideration of the fact that every county varies from every other county and thereby affects the functions, duties, and responsibilities required of its county officers and the scope of responsibilities which each county may, at this time, undertake, the Counties of Alachua, Baker, Bradford, Calhoun, Charlotte, Collier, Columbia, Dade, DeSoto, Dixie, Escambia, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Hillsborough, Holmes, Indian River, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Manatee, Marion, Martin, Okaloosa, Okeechobee, Polk, St. Lucie, Santa Rosa, St. Johns, Sarasota, Sumter, Suwannee, Taylor, Union, Wakulla, and Walton Washington are excluded from the provisions of this chapter until such time as the board of county commissioners of any such county, acting pursuant to the provisions of subsection (1), makes this chapter applicable to such county or until the Legislature, by appropriate act, removes one or more of such counties from this exclusion.

Section 20. Section 367.182, Florida Statutes, is amended to read:

367.182 Saving clause.--All certificates and authorizations valid on the effective date of chapter 80-99, Laws of Florida, shall remain in full force and effect.

CODING: Words stricken are deletions; words underlined are additions.
Henceforth, all certificates and authorizations shall be applied for and renewed in accordance with this act.

Section 21. Sections 367.041, 367.051, 367.055, 367.141, and 367.151, Florida Statutes, are hereby repealed.


Section 24. This act shall take effect October 1, 1989.

CODING: Words struck are deletions; words underlined are additions.
SENATE SUMMARY

Pursuant to Sunset Review, continues provisions of ch. 367, F.S., relating to regulation of water and sewer utilities by the Florida Public Service Commission, as modified by the bill, until October 1, 1999, in advance of which these provisions will again be reviewed.

Revises the term "utility," as used in ch. 367, F.S., to mean a "water or wastewater utility": under current law, the term means a "water or sewer utility." Exempts wastewater treatment plants operated exclusively for disposing of industrial wastewater from the application of the chapter. Revises the list of counties that are excluded from application of the chapter.

Requires a utility to obtain a certificate of authorization prior to being issued a permit to construct a new water or wastewater facility by the Department of Environmental Regulation or prior to being issued a consumptive use or drilling permit by a water management district. Revises procedures for making applications for certificates or amendments thereto and for issuance of such certificates. Provides for objections and hearings thereon.

Provides a penalty if a transfer of a certificate, facilities, or organizational control of a utility is made before commission approval is granted. Requires that systems obtained through foreclosure continue providing service without interruption.

Revises rate-setting and rate-adjusting procedures. Provides a procedure that certain utilities may use to request staff assistance in changing their rates. Requires the commission to set just and reasonable charges for services and conditions for service availability. Provides for reducing a utility's return on equity until certain state environmental standards are met.

Revises fees required of utilities and the manner of their payment. Repeals the application of the gross receipts tax to utilities.

Revises provisions relating to confidentiality of records and exempts the revised provisions from review under the Open Government Sunset Review Act.

(See bill for additional details.)

CODING: Words struck are deletions; words underlined are additions.
A bill to be entitled
An act relating to the regulation of water and
sewer systems; amending s. 367.011, F.S.;
revising how ch. 367, F.S., may be cited;
amending s. 367.021, F.S.; revising the term
"utility," as used in ch. 367, F.S., to mean a
water or wastewater utility; revising and
adding other definitions of terms used in ch.
367, F.S.; amending s. 367.022, F.S., relating
to exemptions; conforming terminology used;
exempting wastewater treatment plants operated
exclusively for disposing of industrial
wastewater from ch. 367, F.S.; amending s.
367.031, F.S.; requiring utilities to obtain
certificates of authorization prior to being
issued permits by the Department of
Environmental Regulation or a water management
district; requiring the commission to grant or
deny an application within 90 days unless an
objection is filed; creating s. 367.045, F.S.;
providing application and amendment procedures
that utilities must follow when applying for an
original or amended certificate of
authorization; providing for objections and
hearings thereon; amending s. 367.071, F.S.;
providing a penalty if a transfer occurs prior
to commission approval; conforming terminology
used; revising cross-references; providing for
the discontinuation and refund of interim
rates; requiring that systems obtained through
foreclosure continue providing service;

CODING: Words stricken are deletions; words underlined are additions.
conforming terminology used; amending s. 367.081, F.S.; requiring the commission to consider a utility's investment in land acquired or facilities constructed or to be constructed in fixing and changing rates; authorizing the commission to project certain data when establishing initial rates; prohibiting a utility from using the index procedures during a rate proceeding; revising the noticing requirement; conforming terminology used; revising a cross-reference; creating s. 367.0814, F.S.; providing procedures to be used when a utility requests staff assistance in changing its rates or charges; amending s. 367.082, F.S., relating to interim rates; providing for collection under escrow or letter of credit; providing for the discontinuance and refund of interim rates; amending s. 367.083, F.S.; changing the time within which the commission must determine the official date of filing or issue another statement of deficiencies; creating s. 367.084, F.S.; requiring that certain orders adjusting rates that are issued by the commission be reduced to writing; providing for notice; amending s. 367.091, F.S.; providing for applications for new classes of services; prohibiting a utility from collecting rates or charges that have not been approved; amending s. 367.101, F.S.; requiring the commission to set just and reasonable charges for services.

CODING: Words striking are deletions; words underlined are additions.
and conditions for service availability; revising a cross-reference; amending s. 367.111, F.S.; providing for the commission to reduce a utility's return on equity if certain state standards are not met; conforming terminology used; amending s. 367.121, F.S.; conforming terminology used; authorizing the commission to require necessary reports from utilities and their affiliated companies; amending s. 367.122, F.S.; revising the manner in which fees are paid; amending s. 367.123, F.S.; conforming terminology used; creating s. 367.145, F.S.; providing for regulatory assessment and application fees; providing for disposition and use of fees; amending s. 367.156, F.S.; revising provisions relating to the confidentiality of certain public utility records; providing for proprietary confidential business information; exempting said section from review under the Open Government Sunset Review Act; amending s. 367.161, F.S.; conforming terminology used; amending s. 367.165, F.S.; conforming terminology used; amending s. 367.171, F.S., relating to effectiveness of chapter in certain counties; providing for counties to remain under the jurisdiction of the commission for a specified time; revising a cross-reference; authorizing the commission to require that a utility apply for an original certificate if it fails to register within a specified time; revising the

CODING: Words stricken are deletions; words underlined are additions.
list of counties excluded from ch. 367, F.S.;
conforming terminology used; amending s.
367.182, F.S., relating to applicability of the
act; deleting provisions relating to
certificate renewal; repealing s. 367.041,
P.S., relating to applications for
certificates; repealing s. 367.051, P.S.,
relating to issuance of certificates; repealing
s. 367.055, F.S., relating to applications for
deletion of territory; repealing s. 367.061,
P.S., relating to extensions of certificates,
repealing s. 367.141, F.S., relating to fees;
repealing s. 367.151, F.S., relating to gross
receipts tax, reviving and readopting ss.
367.011-367.031, 367.071-367.123, 367.156-
367.182, F.S., as amended, notwithstanding
their scheduled repeal by chs. 81-318, 82-25,
and 84-149, Laws of Florida, October 1, 1989;
repealing ss. 367.011-367.182, F.S., October 1,
1999, and providing for review of such sections
in advance of that date; providing that
proceedings pending before the commission prior
to the effective date of this act shall be
disposed of in accordance with the law in
effect at that time; providing an effective
date.

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

Section 1. Subsection (1) of section 367.011, Florida
Statutes, is amended to read:

CODING: Words struck are deletions; words underlined are additions.
367.011 Jurisdiction: legislative intent.--

(1) This chapter may be cited as the "Water and Wastewater Sewer System Regulatory Law."

Section 2. Section 367.021, Florida Statutes, is amended to read:

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

1. "Certificate of authorization" means a document issued by the commission authorizing a utility to provide service in a specific service area territory.


3. "Contribution-in-aid-of-construction" means 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.

4. "Corporate undertaking" means the unqualified guarantee of a utility to pay a refund and pay interest connected therewith which may be ordered by the commission at such time as the obligation becomes fixed and final.

5. "Domestic wastewater" means wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

CODING: Words stricken are deletions; words underlined are additions.
(6) "Effluent reuse" means the use of wastewater after the treatment process, generally for reuse as irrigation water or for in-plant use.

(7) "Governmental authority" means a political subdivision, as defined by s. 1.01(9).

(8) "Industrial wastewater" means wastewater not otherwise defined as domestic wastewater, including runoff and leachate from areas that receive pollutants associated with industrial or commercial storage, handling, or processing.

(9) "Official date of filing" means the date upon which it has been determined, pursuant to s. 367.083, by the commission that the utility has filed with the clerk the minimum filing requirements as established by rule of the commission.

(10) "Service area" means the geographical area described in a certificate of authorization, which may be within or without the boundaries of an incorporated municipality and may include areas in more than one county.

(11) "System" means facilities and land used or useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities and land.

(12) "Utility" means a water or wastewater sewer utility and, except as provided in s. 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater sewer service to the public for compensation.

(13) "Wastewater" means the combination of the liquid and water-carried pollutants from a residence, commercial
building, industrial plant, or institution, together with any
groundwater, surface runoff, or leachate that may be present.

(4) "System" means facilities and property used or
useful in providing service and upon a finding by the
commission, may include a combination of functionally related
facilities and property.

(5) "Governmental agency" means a political
subdivision authorized to provide water or sewer service.

(6) "Territory" means the geographic area described
in a certificate which may be within or without the
boundaries of an incorporated municipality and may include
areas in more than one county.

(7) "Official date of filing" means the date upon
which it has been determined pursuant to s.367.9837 by the
commission or its designee that the utility has filed with the
clerk the minimum filing requirements as established by rule
of the commission.

(8) "Corporate undertaking" means the unqualified
guarantee of a utility to pay a refund and any interest
connected therewith which may be ordered by the commission at
such time as the obligation becomes fixed and final.

Section 3. Subsections (2) and (8) of section 367.022,
Florida Statutes, are amended, and subsection (9) is added to
said section, to read:

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

(2) Systems owned, or systems of which the rates and
charges for utility service to the public are controlled, by

CODING: Words stricken are deletions; words underlined are additions.
governmental authorities operated-managed-controlled by governmental agencies;

(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 s. 367.122.

(9) Wastewater treatment plants operated exclusively for disposing of industrial wastewater.

Section 4. Section 367.031, Florida Statutes, is amended to read:

367.031 Original certificate.—Each utility subject to the jurisdiction of the commission must obtain from the commission a certificate of authorization to provide water or wastewater service or an order recognizing that the system is exempt from regulation as provided by s. 367.022. A utility must obtain a certificate of authorization from the commission prior to being issued a permit by the Department of Environmental Regulation for the construction of a new water or wastewater facility or prior to being issued a consumptive use or drilling permit by a water management district. The commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application, unless an objection is filed pursuant to s. 120.57, or the application will be deemed granted. Prior-to-the-issuance-to-a-utility-of-a permit-by-the-Department-of-Environmental-Regulation-for-the construction-of-a-new-water-or-sewer-facility—the-utility

CODING: Words stricken are deletions; words underlined are additions.
shall obtain a certificate authorizing it to provide service.

Each utility subject to the commission's jurisdiction shall possess a current certificate.

Section 5. Section 367.045, Florida Statutes, is created to read:

367.045 Certificate of authorization, application and amendment procedures.--

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

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

(b) Provide all information required by rule or order of the commission, which information may include a detailed inquiry into the ability of the applicant to provide service, the area and facilities involved, the need for service in the area involved, and the existence or nonexistence of service from other sources within geographical proximity to the area in which the applicant seeks to provide service;

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

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

and

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

CODING: Words stricken are deletions; words underlined are additions.
(2) A utility may not delete or extend its service outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the commission. When a utility applies for an amended certificate of authorization from the commission, it shall:

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

(b) Provide all information required by rule or order of the commission, which information may include a detailed inquiry into the ability or inability of the applicant to provide service, the need or lack of need for service in the area that the applicant seeks to delete or add; the existence or nonexistence of service from other sources within geographical proximity to the area that the applicant seeks to delete or add, and a description of the area sought to be deleted or added to the area described in the applicant's current certificate of authorization;

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

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

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

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

CODING: Words stricken are deletions; words underlined are additions.
(3) If, within 30 days after the last day that notice was mailed or published by the applicant, whichever is later, the commission does not receive written objection to the notice, the commission may dispose of the application without hearing. If the applicant is dissatisfied with the disposition, it may bring a proceeding under s. 120.57.

(4) If, within 30 days after the last day that notice was mailed or published by the applicant, whichever is later, the commission receives from the Public Counsel, a governmental authority, or a utility or consumer who would be substantially affected by the requested certification or amendment a written objection requesting a proceeding pursuant to s. 120.57, the commission shall order such proceeding conducted in or near the area for which application is made, if feasible. Notwithstanding the ability to object on any other ground, a county or municipality has standing to object on the ground that the issuance or amendment of the certificate of authorization violates established local comprehensive plans developed pursuant to ss. 163.3161-163.3211. If a consumer, utility, or governmental authority or the Public Counsel requests a public hearing on the application, such hearing must, if feasible, be held in or near the area for which application is made; and the transcript of such hearing and any material submitted at or before the hearing must be considered as part of the record of the application and any proceeding related thereto.

(5)(a) The commission may grant or amend a certificate of authorization, in whole or in part or with modifications in the public interest, but may not grant authority greater than that requested in the application or amendment thereto and noticed under this section; or it may deny a certificate of

CODING: Words stricken are deletions; words underlined are additions.
authorization or an amendment to a certificate of
authorization, if in the public interest. The commission may
deny an application for a certificate of authorization for any
new Class C wastewater system, as defined by commission rule,
if the public can be adequately served by modifying or
extending a current wastewater system. The commission may not
grant a certificate of authorization for a proposed system, or
an amendment to a certificate of authorization for the
extension of an existing system, which will be in competition
with, or a duplication of, any other system or portion of a
system, unless it first determines that such other system or
portion thereof is inadequate to meet the reasonable needs of
the public or that the person operating the system is unable,
refuses, or neglects to provide reasonably adequate service.

(b) When granting or amending a certificate of
authorization, the commission need not consider whether the
issuance or amendment of the certificate of authorization is
inconsistent with the local comprehensive plan of a county or
municipality unless a timely objection to the notice required
by this section has been made by an appropriate motion or
application. If such an objection has been timely made, the
commission shall consider, but is not bound by, the local
comprehensive plan of the county or municipality.

(6) The revocation, suspension, transfer, or amendment
of a certificate of authorization is subject to the provisions
of this section. The commission shall give 30 days' notice
before it initiates any such action.

Section 6. Section 367.071, Florida Statutes, is
amended to read:

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

CODING: Words stricken are deletions; words underlined are additions.
(1) No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest.

(2) The commission may impose a penalty pursuant to s. 367.161 when a transfer occurs prior to approval by the commission. The transferor remains liable for any outstanding regulatory assessment fees, fines, or refunds of the utility.

(3) An application for proposed sale, assignment, or transfer shall be accompanied by a fee as provided by s. 367.145. No fee is required to be paid by a governmental authority agency that is the buyer, assignee, or transferee.

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

(a) The sale or transfer of a certificate or facilities, in whole or part, to a governmental authority agency shall be approved as a matter of right; however, the governmental authority agency shall, prior to taking any official action, obtain from the utility or commission with respect to the authority or facilities to be sold or transferred the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction.

Any request for rate relief pending before the commission at the time of sale is deemed to have been withdrawn. Interim rates, if previously approved by the commission, must be discontinued, and any money collected pursuant to interim rate relief must be refunded to the customers of the utility with interest.
(b) When paragraph (a) does not apply, the commission shall amend the certificate of authorization as necessary to reflect the change resulting from the sale, assignment, or transfer.

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

(6) Any person, company, or organization that obtains ownership or control over any system, or part thereof, through foreclosure of a mortgage or other encumbrance, shall continue service without interruption and may not remove or dismantle any portion of the system previously dedicated to public use which would impair the ability, without the express approval of the commission. This provision may be enforced by an injunction issued by a court of competent jurisdiction.

Section 7. Section 367.081, Florida Statutes, is amended to read:

367.081 Rates; procedure for fixing and changing.--

(1) Except as provided in subsection (4) or subsection (5), a utility may only charge rates and charges that have been approved by being charged and collected by a utility shall be changed only by approval of the commission.

(2) 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. 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. Contributions-in-aid-of-construction include any
amount or item of money, services, or property received by a
utility from any person or governmental agency, 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 utilized to offset the acquisition,
improvement, or construction costs of the utility property,
facilities, or equipment used to provide utility services to
the public. The commission shall also consider the investment
of the utility in land acquired or facilities constructed or
property required by duly authorized governmental authority 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.

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

(3) The commission, in fixing rates, may determine the
prudent cost of providing service during the period of time

CODING: Words stricken are deletions; words underlined are additions.
the rates will be in effect following the entry of a final
order relating to the rate request of the utility and may use
such costs to determine the revenue requirements that will
allow the utility to earn a fair rate of return on its rate
base.

(4)(a) On or before March 31 of each year, the
commission by order shall establish a price increase or
decrease index for major categories of operating costs
incurred by utilities subject to its jurisdiction reflecting
the percentage of increase or decrease in such costs from the
most recent 12-month historical data available. The
commission by rule shall establish the procedure to be used in
determining such indices and a procedure by which a utility,
without further action by the commission, or the commission on
its own motion, may implement an increase or decrease in its
rates based upon the application of the indices to the amount
of the major categories of operating costs incurred by the
utility during the immediately preceding calendar year, except
to the extent of any disallowances or adjustments for those
expenses of that utility in its most recent rate proceeding
before the commission. The rules shall provide that, upon a
finding of good cause, including inadequate service, the
commission may order a utility to refrain from implementing a
rate increase hereunder unless implemented under a bond or
corporate undertaking in the same manner as interim rates may
be implemented under s. 367.082. A utility may not use this
procedure between the official filing date of the rate
proceeding and 1 year thereafter, unless the case is completed
or terminated at an earlier date. A utility may not use this
procedure to increase any operating cost for which an
adjustment has been or could be made under paragraph (b), or

CODING: Words stricken are deletions; words underlined are additions.
to increase its rates by application of a price index other
than the most recent price index authorized by the commission
at the time of filing.

(b) The approved rates of any utility which receives
all or any portion of its utility service from a governmental
authority agency or from a water or wastewater sewer utility
regulated by the commission and which redistributes that
service to its utility customers shall be automatically
increased or decreased without hearing, upon verified notice
to the commission 45 30 days prior to its implementation of
the increase or decrease that the rates charged by the
governmental authority agency or other utility have changed.
The approved rates of any utility which is subject to an
increase or decrease in the rates that it is charged for
electric power or the amount of ad valorem taxes assessed
against its used and useful property shall be increased or
decreased by the utility, without action by the commission,
upon verified notice to the commission 45 30 days prior to its
implementation of the increase or decrease that the rates
charged by the supplier of the electric power or the taxes
imposed by the governmental authority body have changed. The
new rates authorized shall reflect the amount of the change of
the ad valorem taxes or rates imposed upon the utility by the
governmental authority agency, other utility, or supplier of
electric power. The approved rates of any utility shall be
automatically increased, without hearing, upon verified notice
to the commission 45 30 days prior to implementation of the
increase that costs have been incurred for water-quality or
wastewater-quality testing required by the Department of
Environmental Regulation. The new rates authorized shall
reflect, on an amortized basis, the cost of, or the amount of

CODING: Words strucken are deletions; words underlined are additions.
1 change in the cost of, required water-quality or wastewater-
2 quality testing performed by laboratories approved by the
3 Department of Environmental Regulation for that purpose. The
4 new rates, however, shall not reflect the costs of any
5 required water-quality or wastewater-quality testing already
6 included in a utility's rates. A utility may not use this
7 procedure to increase its rates as a result of water-quality
8 or wastewater-quality testing or an increase in the cost of
9 purchased water services, sewer services, or electric power or
10 in assessed ad valorem taxes, which increase was initiated
11 more than 12 months before the filing by the utility. The
12 provisions of this subsection do not prevent a utility from
13 seeking a change in rates pursuant to the provisions of
14 subsection (2).
15
16 (c) Before implementing a change in rates under this
17 subsection, the utility shall file an affirmation under oath
18 as to the accuracy of the figures and calculations upon which
19 the change in rates is based, stating that the change will not
20 cause the utility to exceed the range of its last authorized
21 rate of return on equity. Whoever makes a false statement in
22 the affirmation required hereunder, which statement he does
23 not believe to be true in regard to any material matter, is
24 guilty of a felony of the third degree, punishable as provided
25 in s. 775.082, s. 775.083, or s. 775.084.
26
27 (d) If, within 15 months after the filing of a
28 utility's annual report required by s. 367.121, the commission
29 finds that the utility exceeded the range of its last
30 authorized rate of return on equity after an adjustment in
31 rates as authorized by this subsection was implemented within
32 the year for which the report was filed or was implemented in
33 the preceding year, the commission may order the utility to
refund, with interest, the difference to the ratepayers and adjust rates accordingly. This provision shall not be construed to require a bond or corporate undertaking not otherwise required.

(e) Notwithstanding anything herein to the contrary, a utility may not adjust its rates under this subsection more than two times in any 12-month period. For the purpose of this paragraph, a combined application or simultaneously filed applications that were filed under the provisions of paragraphs (a) and (b) shall be considered one rate adjustment.

(f) The commission may regularly, not less often than once each year, establish by order a leverage formula or formulae that reasonably reflect the range of returns on common equity for an average water or wastewater sewer utility and which, for purposes of this section, shall be used to calculate the last authorized rate of return on equity for any utility which otherwise would have no established rate of return on equity. In any other proceeding in which an authorized rate of return on equity is to be established, a utility, in lieu of presenting evidence on its rate of return on common equity, may move the commission to adopt the range of rates of return on common equity that has been established under this paragraph.

(5) An application for a rate change must be accompanied by a fee as provided by s. 367.145, except that no fee shall be required for an application for a rate change made pursuant to subsection (4).

(6) The commission may withhold consent to the operation of any rate request or any portion thereof by a vote fixing an order to that effect with the commission clerk.
within 60 days after the date of filing of the rate request, or within a shorter period established by rule of the commission. The order shall state a reason or statement of good cause for the withholding of consent. The commission shall provide a copy of the order to the utility and all interested persons who have requested notice. Such consent shall not be withheld for a period longer than 8 months following the date of filing. The new rates or all or any portion thereof not consented to may be placed into effect by the utility under a bond, escrow, or corporate undertaking subject to refund at the expiration of such period upon notice to the commission and upon filing the appropriate tariffs. The commission shall determine whether the corporate undertaking may be filed in lieu of the bond or escrow. The utility shall keep accurate, detailed accounts of all amounts received because of such rates becoming effective under bond, escrow, or corporate undertaking subject to refund, specifying by whom and in whose behalf such amounts were paid. In its final order relating to such rate request, the commission shall direct the utility to refund, with interest at a fair rate to be determined by the commission in such manner as it may direct, such portion of the increased rates which are found not to be justified and which are collected during the periods specified. The commission shall provide, by rule, for the disposition of any funds not refunded, but in no event shall such funds accrue to the benefit of the utility. The commission shall take final action on the docket and enter its final order within 12 months of the official date of filing.

Section 8. Section 367.0814, Florida Statutes, is created to read.
367.0814 Rates and charges; requests for staff assistance in changing.--

(1) 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. A utility may request staff assistance by filing an application with the commission.

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

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

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

(5) 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.

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

CODING: Words stricken are deletions; words underlined are additions.
Section 9. Subsections (2) and (3) of section 367.082, Florida Statutes, are amended, and subsection (7) is added to said section, to read:

367.082 Interim rates; procedure.--

(2)(a) In a proceeding for an interim increase in rates, the commission shall authorize, within 60 days of the filing for such relief, the collection of rates sufficient to earn the minimum of the range of rate of return calculated in accordance with subparagraph (5)(b)2. The difference between the interim rates and the previously authorized rates shall be collected under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(b) In a proceeding for an interim decrease in rates, the commission shall authorize, within 60 days of the filing for such relief, the continued collection of the previously authorized rates; however, revenues collected under those rates sufficient to reduce the achieved rate of return to the maximum of the rate of return calculated in accordance with subsection (5) shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(c) The commission shall determine whether escrow, letter of credit, or corporate undertaking may be filed in lieu of the bond.

(3) In granting such relief, the commission may, in an expedited hearing but within 60 days of the commencement of the proceeding, upon petition or upon its own motion, preclude the recovery of any extraordinary or imprudently incurred expenditures or, for good cause shown, increase the amount of

CODING: Words stricken are deletions; words underlined are additions.
the bond, escrow, letter of credit, or corporate undertaking.

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

Section 10. Section 367.083, Florida Statutes, is amended to read:

Section 367.083 Determination of official date of filing. -- Within 30 days after receipt of an application, rate request, or other written document for which an official date of filing is to be established, the commission or its designee shall either determine the official date of filing or issue a statement of deficiencies to the applicant, specifically listing why said applicant has failed to meet the minimum filing requirements. Such statement of deficiencies shall be binding upon the commission to the extent that, once the deficiencies in the statement are satisfied, the official date of filing shall be promptly established as provided herein. Thereafter, within 20 plus days after the applicant indicates to the commission that it believes that it has met the minimum filing requirements, the commission or its designee shall either determine the official date of filing or issue another statement of deficiencies, specifically listing why the requirements have not been met, in which case this procedure shall be repeated until the applicant meets the minimum filing requirements and the official date of filing is established. When the commission initiates a proceeding, the official date

CODING: Words stricken are deletions; words underlined are additions.
of filing shall be the date upon which the order initiating
the proceeding is issued.

Section 11. Section 367.084, Florida Statutes, is
created to read:

367.084 Rate adjustment orders.--Any order issued by
the commission adjusting general increases or reductions of
the rates and charges of any utility or regulated company must
be reduced to writing including any dissenting or concurring
opinions within 20 days after the official vote of the
commission. Within such 20-day period, the commission shall
also mail a copy to the clerk of the circuit court of each
county in which customers of the utility or regulated company
are served who are affected by the rate adjustment, which copy
must be kept on file and made available to the public. The
commission shall notify all parties of record in the
proceeding of the date of such mailing. Such an order is not
considered rendered for purposes of appeal, rehearing, or
judicial review until the date the copies are mailed as
required by this section. This provision does not delay the
effective date of the order. Such an order is considered
rendered on the date of the official vote for the purposes of
s. 367.081(6).

Section 12. Section 367.091, Florida Statutes, is
amended to read:

367.091 Rates, tariffs; new class of service.--

(1) All applications for new rates or changes in rates
must be made to the commission in writing as prescribed by
rule.

(2) Each utility's rates, charges, and customer
service policies must be contained in a tariff approved by and
on file with the commission.

CODING: Words strucken are deletions; words underlined are additions.
(3) A utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved. A change in any rate schedule may not be made without commission approval.

(4) If any request for service of a utility shall be for a new class of service not previously approved, the utility may furnish the new class of service and fix and charge just, reasonable, and compensatory rates or charges therefor. A schedule of rates or charges so fixed shall be filed with the commission within 10 days after the service is furnished. The commission may approve such rates or charges as filed or may approve such other rates or charges for the new class of service which it finds are just, reasonable, and compensatory.

(5) An application to establish, increase, or change a rate or charge other than the monthly rates for service pursuant to s. 367.081 or service availability charges pursuant to s. 367.101 must be accompanied by a cost justification. The commission may withhold consent to the operation of any or all portions of the new rate schedules, by a vote to that effect within 60 days giving a reason or statement of good cause for withholding its consent. The commission shall render its final decision on the application within 8 months after the official date of filing.

Section 13. Section 367.101, Florida Statutes, is amended to read:

367.101 Charges for service availability.--

(1) The commission shall set just and reasonable charges and conditions for service availability. The commission, by rule, may set standards for, and levels of, service-availability charges and service-availability

CODING: Words stricken are deletions; words underlined are additions.
conditions. Such charges and conditions made-by-a-utility shall be just and reasonable. The commission shall, upon request or upon its own motion, investigate agreements or proposals for charges and conditions to-be-made-by-a-utility for service availability. The commission shall set just and reasonable charges and conditions for service availability:

(2) An application for approval of charges and conditions for service availability shall be accompanied by a fee as provided by s. 367.145 ss. 336.145.

Section 14. Subsections (1) and (2) of section 367.111, Florida Statutes, are amended to read:

367.111 Service.--

(1) Each utility shall provide service to the area territory described in its certificate of authorization within a reasonable time. If the commission finds that any utility has failed to provide service to any person reasonably entitled thereto, or finds that extension of service to any such person could be accomplished only at an unreasonable cost and that addition of the deleted area territory to that of another utility company is economical and feasible, it may amend the certificate of authorization to delete the area territory not served or not properly served by the utility, or it may rescind the certificate of authorization. If utility service has not been provided to any part of the area territory which a utility is authorized to serve, whether or not there has been a demand for such service, within 5 years after the date of authorization for service to such part, such authorization may be reviewed and amended or revoked by the commission.

(2) Each utility shall provide to each person reasonably entitled thereto such safe, efficient, and
sufficient service as is prescribed by the Florida Safe
Drinking Water Act and the Florida Air and Water Pollution
Control Act, or rules adopted pursuant thereto, or, if
applicable, chapter 17-22, Florida Administrative Code; but
such service shall not be less safe, less efficient, or less
sufficient than is consistent with the approved engineering
design of the system and the reasonable and proper operation
of the utility in the public interest. If the commission
finds that a utility has failed to provide its customers with
water that meets the standards promulgated by the Department
of Environmental Regulation, the commission may reduce the
utility's return on equity until such time as the standards
are met.

Section 15. Subsection (1) of section 367.121, Florida
Statutes, is amended to read:

367.121 Powers of commission.—
(1) In the exercise of its jurisdiction, the
commission shall have power:
(a) To prescribe fair and reasonable rates and
charges, classifications, standards of quality and
measurements, and to prescribe service rules to be observed by
each utility, except to the extent such authority is expressly
given to another state agency;
(b) To prescribe, by rule, a uniform system and
classification of accounts for all utilities, which rules,
among other things, shall establish adequate, fair, and
reasonable depreciation rates and charges;
(c) To require such regular or emergency reports from
a utility, including, but not limited to, financial reports,
as the commission deems necessary and, if the commission finds
a financial report to be incomplete, incorrect, or

CODING: Words strucken are deletions; words underlined are additions.
inconsistent with the uniform system and classification of
accounts, to require a new report or a supplemental report,
either of which the commission may require to be certified by
an independent certified public accountant licensed under
chapter 473;
(d) To require repairs, improvements, additions, and
extensions to any facility, or to require the construction of
a new facility, if reasonably necessary to provide adequate
and proper service to any person entitled to service or if
reasonably necessary to provide any prescribed quality of
service, except that no utility shall be required to extend
its service outside the geographic area territory described in
its certificate of authorization, or make additions to its
plant or equipment to serve outside such area territory,
unless the commission first finds that the utility is
financially able to make such additional investment without
impairing its capacity to serve its existing customers;
(e) To employ and fix the compensation for such
examiners and technical, legal, and clerical employees as it
deems necessary to carry out the provisions of this chapter;
(f) To adopt, by affirmative vote of a majority of the
commission, rules reasonably necessary and appropriate for the
administration and enforcement of this chapter;
(g) To exercise all judicial powers, issue all writs,
and do all things necessary or convenient to the full and
complete exercise of its jurisdiction and the enforcement of
its orders and requirements; and
(h) To order interconnections of service or facilities
between utilities, and to approve any plant capacity charges
or wholesale service charges or rates related thereto,
provided the commission first finds that the utility is

CODING: Words stricken are deletions; words underlined are additions.
financially able to make such additional investment as is required without impairing its capacity to serve its existing customers; and—

(i) To require the filing of reports and other data by a public utility or its affiliated companies, including its parent company, regarding transactions or allocations of common costs, among the utility and such affiliated companies. The commission may also require such reports or other data necessary to ensure that a utility's ratepayers do not subsidize nonutility activities.

Section 16. Subsection (3) of section 367.122, Florida Statutes, is amended to read:

367.122 Examination and testing of meters.--

(3) The commission shall establish reasonable fees to be paid for testing such meters on the request of the customers. Current utility customers or users may, at their discretion, pay the fee fixed by the commission at the time of the request or have the utility include the fee with their next regularly scheduled statement. The fee shall be paid by the utility and repaid to the customer or user if the meter is found defective or incorrect to the disadvantage of the customer or user in excess of the degree or amount of tolerance customarily allowed for such meters, or as may be provided for in rules and regulations of the commission. No fee may be charged for any such testing done by the commission or its representatives.

Section 17. Section 367.123, Florida Statutes, is amended to read:

367.123 Service for resale.--The commission may require a utility to provide service for resale. However,
before requiring the provision of service, the commission shall first find that the utility is financially able to make such additional investment as is required without impairing its capacity to serve its existing customers. Any utility which provides service for resale shall provide such service upon terms and conditions established by the commission, and no utility shall discontinue such service without the approval of the commission. In the event a governmental authority agency voluntarily enters into an agreement for resale, such agreement shall provide that the service will not be discontinued without 90 days' notice being given to the purchaser prior to discontinuing such service. Nothing contained herein shall be construed to prohibit the governmental authority agency from requiring adequate security being given to such authority agency to ensure payments required in the agreement.

Section 18. Section 367.145, Florida Statutes, is created to read:

367.145 Regulatory assessment and application fees.--

(1) The commission shall set, by rule, a regulatory assessment fee that each utility must pay once a year in conjunction with filing its annual financial report required by commission rule. Notwithstanding any provision of law to the contrary, the amount of the regulatory assessment fee shall not exceed 4.5 percent of the gross revenues of the utility derived from intrastate business.

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

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

(2) Each utility shall pay an application fee, established by the commission, for an original certificate of authorization; an amendment to an existing certificate of authorization, a request for rate relief in accordance with s. 367.081 or s. 367.0814; service availability charges filed in accordance with s. 367.101; and when this chapter becomes applicable to a county in accordance with s. 367.171. The amount of the application fee determined by the commission may not exceed $4,500 and must be based upon the existing or proposed capacity of the system, extension, or deletion. All such fee payments must be deposited in accordance with s. 350.113.

(3) Fees collected by the commission pursuant to this section may only be used to cover the cost of regulating water and wastewater systems. Fees collected by the commission pursuant to chapters 364 and 366 may not be used to pay the cost of regulating water and wastewater systems.

Section 19. Section 367.156, Florida Statutes, is amended to read:

CODING: Words struck are deletions; words underlined are additions.
367.156 Public utility records; confidentiality.—

(1) The commission shall continue to have reasonable access to all utility records and records of affiliated companies, including its parent company, regarding transactions or cost allocations among the utility and such affiliated companies, and such records necessary to ensure that a utility's ratepayers do not subsidize nonutility activities. Upon request of the utility or any other person, any records received by the commission which are shown and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1).

(2) Discovery in any docket or proceeding before the commission shall be the commission shall issue protective orders protecting a public utility from discovery of proprietary confidential business information upon a showing by the utility that such protection is necessary. However, if the commission determines that discovery of proprietary confidential business information is necessary to protect the public interest, the commission shall enter an order limiting such discovery in the manner provided for in Rule 1.280 of the Florida Rules of Civil Procedure. Information which affects a utility's rates or cost of service shall be considered relevant for purposes of discovery in any docket or proceeding where the utility's rates or cost of service are at issue. The commission shall determine whether information requested in discovery affects a utility's rates or cost of service. Upon showing by a utility or other person and a finding by the commission that discovery will require the disclosure of proprietary confidential business information, the commission shall issue appropriate protective orders designating the

CODING: Words stricken are deletions; words underlined are additions.
manner for handling such information during the course of the proceeding and for protecting such information from disclosure outside the proceeding. Such proprietary confidential business information shall be exempt from s. 119.07(1). Any records provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the commission and the office of the Public Counsel and any other party subject to the Public Records Act as confidential and shall be exempt from s. 119.07(1), pending a formal ruling on such request by the commission or the return of the records to the person providing the records. Any record which has been determined to be proprietary confidential business information and is not entered into the official record of the proceeding must be returned to the person providing the record within 60 days after the final order, unless the final order is appealed. If the final order is appealed, any such record must be returned within 30 days after the decision on appeal. The commission shall adopt the necessary rules to implement this provision.

(3) Proprietary confidential business information means information, regardless of form or characteristics which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision or private agreement that provides that the information will not be released to the public.

Proprietary business information includes, but is not limited to:

(a) Trade secrets.
(b) Internal auditing controls and reports of internal auditors

(c) Security measures, systems, or procedures.

(d) Information concerning bids or other contractual data, the disclosure of which would impair the efforts of the utility or its affiliates to contract for goods or services on favorable terms.

(e) Information relating to competitive interests, the disclosure of which would impair the competitive businesses of the provider of the information.

(f) Employee personnel information unrelated to compensation, duties, qualifications, or responsibilities.

(4) Any finding by the commission that records contain proprietary confidential business information is effective for a period set by the commission not exceeding 18 months, unless the commission finds, for good cause, that the protection from disclosure shall be for a specified longer period. The commission shall order the return of records containing proprietary confidential business information when such records are no longer necessary for the commission to conduct its business. At that time, the commission shall order any other person holding such records to return them to the person providing the records. Records containing proprietary confidential business information which have not been returned at the conclusion of the period set pursuant to this subsection shall no longer be exempt from s. 119.07(1), unless the public utility or affected person shows, and the commission finds, that the records continue to contain proprietary confidential business information. Upon such finding, the commission may extend the period for confidential treatment for a period not to exceed 18 months, unless the

CODING: Words struck are deletions; words underlined are additions.
commission finds, for good cause, that the protection from
disclosure shall be for a specified longer period. The
commission shall adopt rules to implement this provision which
shall include notice to the public utility or affected person
regarding the expiration of confidential treatment.

(5) This section is not subject to review pursuant to
the provisions of s. 119.14.

Section 20. Subsection (2) of section 367.161, Florida
Statutes, is amended to read

367.161 Penalties.--

(2) The commission has the power to impose upon any
entity that is subject to its jurisdiction under this chapter
and that is found to have refused to comply with, or to have
willfully violated, any lawful rule or order of the commission
or any provision of this chapter a penalty for each offense of
not more than $5,000, which penalty shall be fixed, imposed,
and collected by the commission; or the commission may, for
any such violation, amend, suspend, or revoke any certificate
of authorization issued by it. Each day that such refusal or
violation continues constitutes a separate offense. Each
penalty shall be a lien upon the real and personal property of
the entity, enforceable by the commission as a statutory lien
under chapter 85. The collected penalties shall be deposited
into the General Revenue Fund unallocated.

Section 21. Subsections (1) and (3) of section
367.165, Florida Statutes, are amended to read:

367.165 Abandonment.--It is the intent of the
Legislature that water or wastewater sewer service to the
customers of a utility not be interrupted by the abandonment
or placement into receivership of the utility. To that end:

CODING: Words stricken are depletions; words underlined are additions.
(1) No person, lessee, trustee, or receiver owning, operating, managing, or controlling a utility shall abandon the utility without giving 60 days' notice to the county or counties in which the utility is located and to the commission. Anyone who violates the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of such abandonment constitutes a separate offense. In addition, such act is a violation of this chapter, and the commission may impose upon the utility a penalty for each such offense of not more than $5,000 or may amend, suspend, or revoke its certificate of authorization, each day of such abandonment without prior notice constitutes a separate offense.

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

Section 22. Subsections (1), (2), (3), and (4) of section 367.171, Florida Statutes, are amended to read:

367.171 Effectiveness of this chapter.--

(1) The provisions of this chapter shall become effective in a county of this state upon the adoption of a resolution by the board of county commissioners of such county, or, in counties operating under a countywide charter, by the appropriate board, declaring that such county is subject to the provisions of this chapter. Any board of
county commissioners which adopts such a resolution shall immediately notify the commission of its adoption and submit the resolution to the commission. A county, after 10 continuous years under the jurisdiction of the commission, may by resolution or ordinance rescind any prior resolution or ordinance imposing commission jurisdiction and thereby exclude itself from the provisions of this chapter, except that the county may not exclude itself from the provisions of this section.

(2)(a) Within 30 days after this chapter becomes applicable to a county, each utility shall register by filing with the commission a written statement setting forth the full legal name of the utility, its mailing address, and a brief description of its area of service area.

(b) On the day this chapter becomes applicable to any county, any utility engaged in the operation or construction of a system shall be entitled to receive a certificate for the area served by such utility on the day this chapter becomes applicable to it. Within 90 days after the day this chapter becomes applicable to it, the utility shall make application for a certificate by filing with the commission:

1. A map of its existing system or system under construction;

2. A description of the area served by the system; and

3. A tariff listing all rates and charges and such other financial information as may be required by the commission.

Such application shall be accompanied by a fee as provided by s. 367.145 ss. 367.145. If a utility fails to register with the commission within the prescribed time, the commission may

CODING: Words stricken are deletions; words underlined are additions.
require that the utility apply for an original certificate of
authorization in accordance with s. 367.045.

(c) Before the commission issues a certificate of
authorization under paragraph (b), it may establish the amount
of money prudently invested in property of the utility, which
property is used and useful in the public service; may
establish other elements of the rate base; and may set and
approve rates pursuant to s. 367.081.

(3) In consideration of the variance of powers,
duties, responsibilities, population, and size of
municipalities of the several counties and in consideration of
the fact that every county varies from every other county and
thereby affects the functions, duties, and responsibilities
required of its county officers and the scope of
responsibilities which each county may, at this time,
undertake, the Counties of Alachua, Baker, Bradford, Calhoun,
Charlotte, Collier, Columbia, Dade, DeSoto, Dixie, Escambia,
Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry,
Highlands, Hillsborough, Holmes, Indian River, Jefferson,
Lafayette, Leon, Levy, Liberty, Madison, Manatee, Marion,
Martin, Okaloosa, Okeechobee, Polk, St. Lucie, Santa Rosa, St.
Johns, Sarasota, Sumter, Suwannee, Taylor, Union, Wakulla, and
Walton Washington are excluded from the provisions of this
chapter until such time as the board of county commissioners
of any such county, acting pursuant to the provisions of
subsection (1), makes this chapter applicable to such county
or until the Legislature, by appropriate act, removes one or
more of such counties from this exclusion.

(4) As of the day a utility is no longer regulated by
the commission under this chapter, each such utility which is
engaged in the operation or construction of a system shall be
entitled to receive from the county in which it is located and operating a certificate of authorization for each area for which such utility held a certificate of authorization from the commission on the day the utility became subject to regulation by the county. The utility will make application by filing with the governing body of the county:

(a) A map of its existing system or system under construction;

(b) A certified copy of the certificate of authorization issued by the commission, including a legal description of the service area for which the certificate of authorization was issued;

(c) A tariff, listing all rates and charges then in effect, which shall remain in effect until thereafter lawfully changed;

(d) A copy of the operating regulations and procedures of the utility then in effect, which shall remain in effect until thereafter lawfully changed; and

(e) The then-current rate base of the utility, which shall then continue to be the rate base of the utility until thereafter lawfully changed.

Section 23. Section 367.182, Florida Statutes, is amended to read:

367.182 Saving clause.—All certificates and authorizations valid on the effective date of chapter 80-99, Laws of Florida, shall remain in full force and effect. Henceforth, all certificates and authorizations shall be applied for and renewed in accordance with this act.

Section 24. Sections 367.041, 367.051, 367.055, 367.061, 367.141, and 367.151, Florida Statutes, are hereby repealed.

CODING: Words strucken are deletions; words underlined are additions.


Section 27. The prohibition in subsection (3) of section 367.145, shall not take effect until January 1, 1991.

Section 28. Proceedings pending before the Public Service Commission at the time this act takes effect shall be disposed of by the commission in accordance with the law in effect at the time the proceeding was initiated, whether by notice, application, petition of a utility, notice or order of the commission, or objection of a party.

Section 29. This act shall take effect October 1, 1989.
The bill originally contained separate provisions regarding the extension of a utility’s certificate of authorization, and required utilities to provide the first meter test to current customers or users free of charge. The committee substitute deletes these provisions and adds provisions which were not included in the original bill. The committee substitute amends s. 367.171, F.S., to require that counties remain under the jurisdiction of the PSC for ten years. The section is also amended to authorize the PSC to require that a utility apply for an original certificate of authorization if it fails to register with the commission within 30 days of the chapters becoming applicable to a county.

The committee substitute prohibits, after January 1, 1991, the subsidization of water and sewer regulation by funds collected from other PSC regulated industries. In order to insure that a utility’s ratepayers are not subsidizing non-utility activities, the committee substitute contains provisions which authorize the commission to require necessary reports from utilities and their affiliated companies. The committee substitute also provides for any proceedings pending before the PSC prior to the effective date of this act to be disposed of in accordance with the law in effect at the time the proceeding was initiated. In addition, the committee substitute contains numerous technical changes which conform terminology used throughout the chapter, and revises various cross-references.
A bill to be entitled
An act relating to water and sewer systems;
amending s. 367.011, F.S.; revising chapter
citation; amending s. 367.021, F.S.; revising
and adding definitions; amending s. 367.022,
F.S.; revising exemptions; providing an
exemption for wastewater treatment plants
operated exclusively for disposing of
industrial wastewater; amending s. 367.031,
F.S.; requiring certificates of authorization
prior to issuance of permits by the Department
of Environmental Regulation or a water
management district; specifying a time period
for grant or denial of an application; creating
s. 367.045, F.S.; providing certificate of
authorization application and amendment
procedures; providing for objections and
hearings; requiring certain notice prior to
revocation, suspension, transfer, or amendment
of a certificate of authorization; amending s.
367.071, F.S.; revising provisions relating to
sale, assignment, or transfer of a certificate
of authorization, facilities, or control;
providing a penalty for transfer prior to
Public Service Commission approval; providing
for discontinuation and refund of interim
rates; requiring the continued service of
systems obtained through foreclosure; amending
s. 367.081, F.S.; revising procedures for
fixing and changing utility rates; providing
considerations and restrictions; revising

CODING: Words struck are deletions; words underlined are additions.
certain notice requirements; creating s. 367.0811, F.S.; providing for staff assistance to a utility in changing rates and charges; providing procedures; amending s. 367.082, F.S.; providing for collection of interim rates under escrow or a letter of credit; providing for discontinuation and refund of interim rates; amending s. 367.083, F.S.; extending time for commission determination of official date of filing or issuance of another statement of deficiencies; creating s. 367.084, F.S.; requiring certain commission rate adjustment orders to be reduced to writing; requiring certain notice; amending s. 367.091, F.S.; providing for application for new class of service; prohibiting collection of rates or charges that have not been approved; amending s. 367.101, F.S.; revising provisions relating to charges and conditions for service availability; amending s. 367.111, F.S.; authorizing reduction of a utility's return on equity if certain standards are not met; amending s. 367.121, F.S.; providing for referral of certain proceedings to the Division of Administrative Hearings of the Department of Administration; amending s. 367.141, F.S.; correcting cross references; amending s. 367.151, F.S.; providing for payment of a regulatory assessment fee according to a specified schedule; amending s. 367.156, F.S.; providing for commission access to utility

CODING: Words struck are deletions; words underlined are additions.
records; providing discovery procedures;
revising exemptions for public records
requirements for proprietary confidential
business information and saving said exemptions
from repeal; providing for future review and
repeal; amending ss. 367.161 and 367.165, F.S.;
conforming language; deleting obsolete
language; amending s. 367.171, F.S.; revising
provisions relating to the effectiveness of the
chapter in certain counties; providing
procedure if a utility fails to register within
the prescribed time; revising the list of
excluded counties; providing for regulation
therein by the county; providing for regulation
by the commission of utility services which
transverse county boundaries; amending s.
367.182, F.S.; revising a saving clause;
repealing ss. 367.041, 367.051, 367.055, and
367.061, F.S., relating to application for
certification, issuance of certificate,
application for deletion of territory, and
extension of certificate; saving chapter 367,
F.S., from Sunset repeal; providing for review
and repeal; providing an effective date.

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

Section 1. Subsection (1) of section 367.011, Florida
Statutes, is amended to read:

367.011 Jurisdiction; legislative intent.--

CODING: Words stricken are deletions; words underlined are additions.
(1) This chapter may be cited as the "Water and Wastewater Sewer System Regulatory Law."

Section 2. Section 367.021, Florida Statutes, is amended to read:

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

1. "Certificate of authorization" means a document issued by the commission authorizing a utility to provide service in a specific service area territory.


3. "Contributions-in-aid-of-construction" means 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.

4. "Corporate undertaking" means the unqualified guarantee of a utility to pay a refund and any interest connected therewith which may be ordered by the commission at such time as the obligation becomes fixed and final.

5. "Domestic wastewater" means wastewater derived principally from dwellings, business buildings, institutions, and the like; sanitary wastewater; and sewage.

6. "Effluent reuse" means the use of treated wastewater after leaving the treatment plant, generally being reused as irrigation water or for in-plant use.

CODING: Words stricken are deletions; words underlined are additions.
"Governmental authority agency" means a political subdivision as defined by s. 1.01(8) authorized to provide water-or-sewer-service.

"Industrial wastewater" means wastewater not otherwise defined as domestic wastewater, including runoff and leachate from areas that receive pollutants associated with industrial or commercial storage, handling, or processing.

"Last day of notice" means the last day that notice required by s. 367.045 was mailed or published.

"Official date of filing" means the date upon which it has been determined, pursuant to s. 367.083, by the commission or its designee that the utility has filed with the clerk the minimum filing requirements as established by rule of the commission.

"Service area" means the geographical area described in a certificate of authorization, which may be within or without the boundaries of an incorporated municipality and may include areas in more than one county.

"System" means facilities and property used or useful in providing service and, upon a finding by the commission, may include a combination of functionally related facilities, and property, and land.

"Territory" means the geographical area described in a certificate, which may be within or without the boundaries of an incorporated municipality and may include areas in more than one county.

"Utility" means a water or wastewater sewer utility and, except as provided in s. 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction.
of a system, who is providing, or proposes to provide, water
or wastewater sewer service to the public for compensation.

(15) "Wastewater" means the combination of the liquid
and water-carried pollutants from residences, commercial
buildings, industrial plants, and institutions, together with
any groundwater, surface runoff, or leachate which may be
present.

Section 3. Subsections (2), (7), and (8) of section
367.022, Florida Statutes, are amended, and subsection (9) is
added to said section, to read:

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

(2) Systems owned, or systems of which the rates and
charges for utility service to the public are operated,
managed, or controlled by governmental authorities agencies;

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

(8) Any person who resells water or wastewater sewer
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 s. 367.1221, and--

(9) Wastewater treatment plants operated exclusively
for disposing of industrial wastewater.

CODING: Words striken are deletions; words underlined are additions.
Section 4. Section 367.031, Florida Statutes, is amended to read:

367.031 Original certificate.--Each utility subject to the jurisdiction of the commission shall obtain from the commission a certificate of authorization to provide water or wastewater service or an order recognizing that the system is exempt from regulation as provided by s. 367.022. A utility shall obtain a certificate of authorization from the commission prior to being issued a permit by the Department of Environmental Regulation for the construction of a new water or wastewater facility or prior to being issued a consumptive use or drilling permit by a water management district. The commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application, unless an objection is filed pursuant to s. 120.57, or the application shall be deemed granted. Prior to the issuance of a utility's certificate, the utility shall provide notice of the actual application filed by mail or personal delivery to the governing body of the county or city affected, to the Public Counsel, to the commission.

Section 5. Section 367.045, Florida Statutes, is created to read:

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

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

(a) Provide notice of the actual application filed by mail or personal delivery to the governing body of the county or city affected, to the Public Counsel, to the commission,

CODING: Words stricken are deletions; words underlined are additions.
and to such other persons and in such other manner as may be prescribed by commission rule.

(b) Provide all information required by rule or order of the commission, which information may include a detailed inquiry into the ability of the applicant to provide service, the area and facilities involved, the need for service in the area involved, and the existence or nonexistence of service from other sources within geographical proximity to the area in which the applicant seeks to provide service.

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

(d) File the application fee required by s. 367.141.

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

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

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

(b) Provide all information required by rule or order of the commission, which information may include a detailed inquiry into the ability or inability of the applicant to provide service, the need or lack of need for service in the

CODING: Words struck are deletions; words underlined are additions.
area that the applicant seeks to delete or add; the existence
or nonexistence of service from other sources within
geographical proximity to the area that the applicant seeks to
delete or add, and a description of the area sought to be
deleted or added to the area described in the applicant's
current certificate of authorization.

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

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

(e) File the application fee required by s. 367.141.

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

(3) If, within 30 days after the last day that notice
was mailed or published by the applicant, whichever is later,
the commission does not receive written objection to the
notice, the commission may dispose of the application without
hearing. If the applicant is dissatisfied with the
disposition, it may bring a proceeding under s. 120.57.

(4) If, within 30 days after the last day that notice
was mailed or published by the applicant, whichever is later,
the commission receives from the Public Counsel, a
governmental authority, or a utility or consumer who would be
substantially affected by the requested certification or
amendment a written objection requesting a proceeding pursuant
to s. 120.57, the commission shall order such proceeding
conducted in or near the area for which application is made,
if feasible. Notwithstanding the ability to object on any
other ground, a county or municipality has standing to object
on the ground that the issuance or amendment of the certificate of authorization violates established local comprehensive plans developed pursuant to ss. 163.3161-163.3211. If a consumer, utility, or governmental authority or the Public Counsel requests a public hearing on the application, such hearing shall, if feasible, be held in or near the area for which application is made; and the transcript of such hearing and any material submitted at or before the hearing shall be considered as part of the record of the application and any proceeding related thereto.

(5)(a) The commission may grant or amend a certificate of authorization, in whole or in part or with modifications in the public interest, but may not grant authority greater than that requested in the application or amendment thereto and noticed under this section; or it may deny a certificate of authorization or an amendment to a certificate of authorization, if in the public interest. The commission may deny an application for a certificate of authorization for any new Class C wastewater system, as defined by commission rule, if the public can be adequately served by modifying or extending a current wastewater system. The commission may not grant a certificate of authorization for a proposed system, or an amendment to a certificate of authorization for the extension of an existing system, which will be in competition with, or a duplication of, any other system or portion of a system, unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service.

(b) When granting or amending a certificate of authorization, the commission need not consider whether the CODING: Words stricken are deletions; words underlined are additions.
issuance or amendment of the certificate of authorization is inconsistent with the local comprehensive plan of a county or municipality unless a timely objection to the notice required by this section has been made by an appropriate motion or application. If such an objection has been timely made, the commission shall consider, but is not bound by, the local comprehensive plan of the county or municipality.

(6) The revocation, suspension, transfer, or amendment of a certificate of authorization is subject to the provisions of this section. The commission shall give 30 days' notice before it initiates any such action.

Section 6. Section 367.071, Florida Statutes, is amended to read:

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

(1) No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof, or majority organizational control without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest and that the buyer, assignee, or transferee will fulfill the commitments, obligations, and representations of the utility.

(2) When a transfer occurs prior to the approval of the commission, without the utility first notifying the commission of its intent, the utility is subject to penalty pursuant to s. 367.161. The transferor remains liable for regulatory assessment fees and any fines and refunds of the utility.

(3) An application for proposed sale, assignment, or transfer shall be accompanied by a fee as provided by s.

CODING: Words stricken are deletions; words underlined are additions.
367.141. No fee is required to be paid by a governmental agency that is the buyer, assignee, or transferee. An application shall be disposed of as provided in s. 367.045, except that:
(a) The sale of or-transfer-of-a-certificate-or facilities, in whole or part, to a governmental authority agency shall be approved as a matter of right; however, the governmental authority agency shall, prior to taking any official action, obtain from the utility or the commission with respect to the authority-or facilities to be sold or transferred the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction. Any request for rate relief pending before the commission at the time of sale shall be deemed withdrawn. Interim rates, if previously approved by the commission, shall be discontinued, and any money collected pursuant to interim rate relief shall be refunded to the customers with interest.
(b) When paragraph (a) does not apply, the commission shall amend the certificate of authorization as necessary to reflect the change resulting from the sale, assignment, or transfer.

The commission by order may establish the rate base for a utility or its facilities or property when the commission approves a sale, assignment, or transfer thereof, except for any sale, assignment, or transfer to a governmental authority agency.

Any person who obtains ownership or control over any system or part thereof through foreclosure of a mortgage or other encumbrance shall have the obligation to continue service on an uninterrupted basis in the stead of the

CODING: Words stricken are deletions; words underlined are additions.
certificateholder and may not remove or dismantle any portion of the system previously dedicated to public use without the express approval of the commission. Such person shall file an application for transfer pursuant to subsection (1) within 30 days of obtaining ownership or control.

Section 7. Section 367.081, Florida Statutes, is amended to read:

367.081 Rates; procedure for fixing and changing.--
(1) Except as provided in subsection (4), a utility shall only charge rates and charges which have been approved by the being-charged-and-collected-by-a-utility-shall-be changed-only-by-approval-of-the commission.

(2)(a) 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. 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. Contributions-in-aid-of-construction include any amount or item of money, services, or property received by a

CODING: Words stricken are deletions; words underlined are additions.
The commission shall also consider the investment of the utility in land acquired or property constructed or required by duly authorized governmental authority to be constructed in the public interest within a reasonable time in the future, not to exceed 24 months from the end of the historical test period used to set final rates, unless extended by the commission.

(b) In establishing initial rates for a utility, the commission may project the financial and operational data, as set forth in paragraph (a), to a time when the utility is expected to be operating at a reasonable level of capacity such that economies of scale may be achieved.

(3) The commission, in fixing rates, may determine the prudent cost of providing service during the period of time the rates will be in effect following the entry of a final order relating to the rate request of the utility and may use such costs to determine the revenue requirements that will allow the utility to earn a fair rate of return on its rate base.

(4)(a) On or before March 31 of each year, the commission by order shall establish a price increase or decrease index for major categories of operating costs incurred by utilities subject to its jurisdiction reflecting the percentage of increase or decrease in such costs from the most recent 12-month historical data available. The
commission by rule shall establish the procedure to be used in
determining such indices and a procedure by which a utility,
without further action by the commission, or the commission on
its own motion, may implement an increase or decrease in its
rates based upon the application of the indices to the amount
of the major categories of operating costs incurred by the
utility during the immediately preceding calendar year, except
to the extent of any disallowances or adjustments for those
expenses of that utility in its most recent rate proceeding
before the commission. The rules shall provide that, upon a
finding of good cause, including inadequate service, the
commission may order a utility to refrain from implementing a
rate increase hereunder unless implemented under a bond or
corporate undertaking in the same manner as interim rates may
be implemented under s. 367.082. A utility shall not use this
procedure during the pendency of a rate proceeding, between
the official filing date and 1 year thereafter, unless the
case is earlier terminated or completed. A utility may not
use this procedure to increase any operating cost for which an
adjustment has been or could be made under paragraph (b) or to
increase its rates by application of a price index other than
the most recent price index authorized by the commission at
the time of filing.

(b) The approved rates of any utility which receives
all or any portion of its utility service from a governmental
authority agency or from a water or wastewater sewer utility
regulated by the commission and which redistributes that
service to its utility customers shall be automatically
increased or decreased without hearing, upon verified notice
to the commission 45 30 days prior to its implementation of
the increase or decrease that the rates charged by the

CODING: Words stricken are deletions, words underlined are additions.
The approved rates of any utility which is subject to an increase or decrease in the rates that it is charged for electric power or the amount of ad valorem taxes assessed against its property shall be increased or decreased by the utility, without action by the commission, upon verified notice to the commission 45 days prior to its implementation of the increase or decrease that the rates charged by the supplier of the electric power or the taxes imposed by the governmental body have changed. The new rates authorized shall reflect the amount of the change of the ad valorem taxes or rates imposed upon the utility by the governmental authority agency, other utility, or supplier of electric power. The approved rates of any utility shall be automatically increased, without hearing, upon verified notice to the commission 45 days prior to implementation of the increase that costs have been incurred for water-quality or wastewater-quality testing required by a governmental authority the Department of Environmental Regulation. The new rates authorized shall reflect, on an amortized basis, the cost of, or the amount of change in the cost of, required water-quality or wastewater-quality testing performed by laboratories approved by the Department of Environmental Regulation for that purpose. The new rates, however, shall not reflect the costs of any required water-quality or wastewater-quality testing already included in a utility's rates. A utility may not use this procedure to increase its rates as a result of water-quality or wastewater-quality testing or an increase in the cost of purchased water services, wastewater sewer services, or electric power or in assessed ad valorem taxes, which increase was initiated more
than 12 months before the filing by the utility. The provisions of this subsection do not prevent a utility from seeking a change in rates pursuant to the provisions of subsection (2).

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

(d) If, within 15 months after the filing of a utility's annual report required by s. 367.121, the commission finds that the utility exceeded the range of its last authorized rate of return on equity after an adjustment in rates as authorized by this subsection was implemented within the year for which the report was filed or was implemented in the preceding year, the commission may order the utility to refund with interest the difference to the ratepayers and adjust rates accordingly. This provision shall not be construed to require a bond or corporate undertaking not otherwise required.

(e) Notwithstanding anything herein to the contrary, a utility may not adjust its rates under this subsection more than two times in any 12-month period. For the purpose of this paragraph, a combined application or simultaneously filed applications that were filed under the provisions of
paragraphs (a) and (b) shall be considered one rate adjustment.

(f) The commission may regularly, not less often than once each year, establish by order a leverage formula or formulae scale-or-scales that reasonably reflect the range of returns on common equity for an average water or wastewater sewer utility and which, for purposes of this section, shall be used to calculate the last authorized rate of return on equity for any utility which otherwise would have no established rate of return on equity. In any other proceeding in which an authorized rate of return on equity is to be established, a utility, in lieu of presenting evidence on its rate of return on common equity, may move the commission to adopt the range of rates of return on common equity that has been established under this paragraph.

(5) An application for a rate change must be accompanied by a fee as provided by s. 367.141, except that no fee shall be required for an application for a rate change made pursuant to subsection (4).

(6) The commission may withhold consent to the operation of any rate request or any portion thereof by entering its vote filing-an-order to that effect with-the commission-clerk within 60 days after the date of filing of the rate request, or within a shorter period established by rule of the commission. The order shall state a reason or statement of good cause for the withholding of consent. The commission shall provide a copy of the order to the utility and all interested persons who have requested notice. Such consent shall not be withheld for a period longer than 8 months following the date of filing. The new rates or all or any portion thereof not consented to may be placed into effect.

CODING: Words struck are deletions; words underlined are additions.
by the utility under a bond, escrow, or corporate undertaking subject to refund at the expiration of such period upon notice to the commission and upon filing the appropriate tariffs.

The commission shall determine whether the corporate undertaking may be filed in lieu of the bond or escrow. The utility shall keep accurate, detailed accounts of all amounts received because of such rates becoming effective under bond, escrow, or corporate undertaking subject to refund, specifying by whom and in whose behalf such amounts were paid. In its final order relating to such rate request, the commission shall direct the utility to refund, with interest at a fair rate to be determined by the commission in such manner as it may direct, such portion of the increased rates which are found not to be justified and which are collected during the periods specified. The commission shall provide by rule for the disposition of any funds not refunded, but in no event shall such funds accrue to the benefit of the utility. The commission shall take final action on the docket and enter its final vote order within 12 months of the official date of filing.

(7) A utility may specifically request the commission to process its petition for rate relief using the agency’s proposed agency action procedure, as prescribed by commission rule. The commission shall enter its vote on the proposed agency action within 5 months of the official filing date. If the commission’s proposed action is protested, the final decision shall be rendered by the commission within 8 months of the date the protest is filed.

(8) The commission shall ensure that the rates and charges of all utilities reflect current federal income tax
and state corporate income tax rates by no later than January 1, 1990.

Section 8. Section 367.0811, Florida Statutes, is created to read:

367.0811 Rates; staff assistance and procedure for changing.--

(1) The commission may establish rules whereby a small water and wastewater utility may request and obtain staff assistance for the purpose of changing the utility's rates and charges.

(2) The official date of filing shall be established as 30 days after official acceptance by the commission or its designee. Upon such acceptance, the utility shall have 30 days to remit a fee as provided by s. 367.141.

(3) The provisions of s. 367.081(1), (2)(a), and (3) shall apply in determining the rates and charges, except as provided for in subsection (8).

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

(5) 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.

(6) If a utility becomes exempt from commission regulation or jurisdiction during the pendency of a staff-assisted rate case and after temporary rates have been established, the commission shall retain jurisdiction to determine the adequacy of the temporary rates.

(7) The commission shall have 15 months from the official date of filing to render a final vote.

CODING: Words stricken are deletions; words underlined are additions.
(8) The commission may by rule establish standards and procedures whereby rates and charges of small utilities may be set using criteria other than those set forth in s 367.081(1), (2)(a), and (3).

Section 9. Subsection (2) of section 367.082, Florida Statutes, is amended, and subsection (7) is added to said section, to read:

367.082 Interim rates; procedure.--

(2)(a) In a proceeding for an interim increase in rates, the commission shall authorize, within 60 days of the filing for such relief, the collection of rates sufficient to earn the minimum of the range of rate of return calculated in accordance with subparagraph (5)(b)2. The difference between the interim rates and the previously authorized rates shall be collected under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(b) In a proceeding for an interim decrease in rates, the commission shall authorize, within 60 days of the filing for such relief, the continued collection of the previously authorized rates; however, revenues collected under those rates sufficient to reduce the achieved rate of return to the maximum of the rate of return calculated in accordance with subsection (5) shall be placed under bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the commission.

(c) The commission shall determine whether corporate undertaking may be filed in lieu of the bond, escrow, or letter of credit.

(7) If a utility becomes exempt from commission regulation or jurisdiction during the pendency of a rate case,

CODING: Words stricken are deletions; words underlined are additions.
the rate relief pending before the commission shall be deemed withdrawn. Interim rates, if previously approved, shall be discontinued and any money collected pursuant to interim rate relief shall be refunded to the customers with interest.

Section 10. Section 367.083, Florida Statutes, is amended to read:

367.083 Determination of official date of filing.—Within 30 days after receipt of an application, rate request, or other written document for which an official date of filing is to be established, the commission or its designee shall either determine the official date of filing or issue a statement of deficiencies to the applicant, specifically listing why said applicant has failed to meet the minimum filing requirements. Such statement of deficiencies shall be binding upon the commission to the extent that, once the deficiencies in the statement are satisfied, the official date of filing shall be promptly established as provided herein. Thereafter, within 20 ¼ days after the applicant indicates to the commission that it believes that it has met the minimum filing requirements, the commission or its designee shall either determine the official date of filing or issue another statement of deficiencies, specifically listing why the requirements have not been met, in which case this procedure shall be repeated until the applicant meets the minimum filing requirements and the official date of filing is established.

When the commission initiates a proceeding, the official date of filing shall be the date upon which the order initiating the proceeding is issued.

Section 11. Section 367.084, Florida Statutes, is created to read:

CODING: Words stricken are deletions; words underlined are additions.
367.084 Rate adjustment orders -- Any order issued by the commission adjusting general increases or reductions of the rates and charges of any utility or regulated company shall be reduced to writing, including any dissenting or concurring opinions, within 20 days after the official vote of the commission. Within such 20-day period, the commission shall also mail a copy to the clerk of the circuit court of each county in which customers of the utility or regulated company are served who are affected by the rate adjustment, which copy shall be kept on file and made available to the public. The commission shall notify all parties of record in the proceeding of the date of such mailing. Such an order is not considered rendered for purposes of appeal, rehearing, or judicial review until the date the copies are mailed as required by this section. This provision does not delay the effective date of the order. Such an order is considered rendered on the date of the official vote for the purposes of s. 367.081(6).

Section 12. Section 367.091, Florida Statutes, is amended to read:

367.091 Rates, tariffs; new class of service.--

(1) All applications for new rates or changes in rates shall be made to the commission in writing as prescribed by rule.

(2) Each utility's rates, charges, and customer service policies shall be contained in a tariff approved by and on file with the commission.

(3) A utility may only impose and collect those rates and charges approved by the commission for the particular class of service involved. A change in any rate schedule may not be made without commission approval.

CODING: Words stricken are deletions; words underlined are additions.
If any request for service of a utility shall be for a new class of service not previously approved, the utility may furnish the new class of service and fix and charge just, reasonable, and compensatory rates or charges therefor. A schedule of rates or charges so fixed shall be filed with the commission within 10 days after the service is furnished. The commission may approve such rates or charges as filed or may approve such other rates or charges for the new class of service which it finds are just, reasonable, and compensatory.

An application to establish, increase, or change a rate or charge other than the monthly rates for services pursuant to s. 367.081, or service-availability charges pursuant to s. 367.101, shall be accompanied by a cost justification. The commission may withhold consent to the operation of any or all portions of the new rate schedules by a vote to that effect within 60 days, giving a reason or statement of good cause for withholding its consent. The commission shall render its final decision on the application within 8 months after the official date of filing.

Section 13. Section 367.101, Florida Statutes, is amended to read:

367.101 Charges for service availability.--

1. The commission shall set just and reasonable charges and conditions for service availability. The commission, by rule, may set standards for, and levels of, service-availability charges and service-availability conditions. Such charges and conditions made-by-a-utility shall be just and reasonable. The commission shall, upon request or upon its own motion, investigate agreements or proposals for charges and conditions to-be-made-by-a-utility

CODING: Words stricken are deletions; words underlined are additions.
for service availability. The commission shall set just and reasonable charges and conditions for service availability.

(2) An application for approval of charges and conditions for service availability shall be accompanied by a fee as provided by s. 367.141.

Section 14. Section 367.111, Florida Statutes, is amended to read:

367.111 Service.--

(1) Each utility shall provide service to the area territory described in its certificate of authorization within a reasonable time. If the commission finds that any utility has failed to provide service to any person reasonably entitled thereto, or finds that extension of service to any such person could be accomplished only at an unreasonable cost and that addition of the deleted area territory to that of another utility company is economical and feasible, it may amend the certificate of authorization to delete the area territory not served or not properly served by the utility, or it may rescind the certificate of authorization. If utility service has not been provided to any part of the area territory which a utility is authorized to serve, whether or not there has been a demand for such service, within 5 years after the date of authorization for service to such part, such authorization may be reviewed and amended or revoked by the commission.

(2) Each utility shall provide to each person reasonably entitled thereto such safe, efficient, and sufficient service as is prescribed by the Florida Safe Drinking Water Act and the Florida Air and Water Pollution Control Act, or rules adopted pursuant thereto, or, if applicable, chapter 17-22, Florida Administrative Code; but

CODING: Words stricken are deletions; words underlined are additions.
such service shall not be less safe, less efficient, or less sufficient than is consistent with the approved engineering design of the system and the reasonable and proper operation of the utility in the public interest. If the commission finds that a utility has failed to provide its customers with water that meets the standards promulgated by the Department of Environmental Regulation, the commission may reduce the utility's return on equity until such time as the standards are met.

Section 15. Paragraph (d) of subsection (1) of section 367.121, Florida Statutes, is amended, and subsection (3) is added to said section, to read:

367.121 Powers of commission.--

(1) In the exercise of its jurisdiction, the commission shall have power:

(d) To require repairs, improvements, additions, and extensions to any facility, or to require the construction of a new facility, if reasonably necessary to provide adequate and proper service to any person entitled to service or if reasonably necessary to provide any prescribed quality of service, except that no utility shall be required to extend its service outside the geographic area territory described in its certificate of authorization, or make additions to its plant or equipment to serve outside such area territory, unless the commission first finds that the utility is financially able to make such additional investment without impairing its capacity to serve its existing customers;

(3) Notwithstanding any other provision of law to the contrary, the commission chairman may, on his own initiative or upon the petition of one or more of the parties to any proceeding held pursuant to this chapter, refer such

CODING: Words stricken are deletions; words underlined are additions.
proceeding to the Division of Administrative Hearings of the
Department of Administration. If a proceeding is referred to
the Division of Administrative Hearings, the division shall
hear the proceeding, to include customer service hearings, if
any.

Section 16. Section 367.141, Florida Statutes, is
amended to read:

367.141 Fees.--An application by a utility, made
pursuant to the provisions of s. 367.045, 367.047, s. 367.055,
3. 367.061, s. 367.071, s. 367.081, s. 367.101, or s. 367.171,
shall be accompanied by a fee, to be set by commission rule
and to be based upon the existing or proposed capacity of the
system, or extension, or deletion, with the following
limitations:

(1) From 1 to 999 persons, not more than $150;
(2) From 1,000 to 4,999 persons, not more than $900;
(3) From 5,000 to 9,999 persons, not more than $1,500;
(4) Ten thousand or more persons, not more than
$2,250.

Such fees shall be placed in the Public Service Regulatory
Trust Fund under the provisions of chapter 350.

Section 17. Section 367.151, Florida Statutes, is
amended to read:

367.151 Regulatory assessment fees Gross-receipts
tax --

(1) Notwithstanding any provision of law to the
contrary, each utility shall pay to the commission a
regulatory assessment fee according to the schedule outlined
in subsection (2) in-the-amount-set-forth-in-s. 350.913. Each
governmental authority agency to which ownership or control of

CODING: Words stricken are deletions; words underlined are additions.
a utility is transferred shall not be liable for any fees owed
the commission by the utility as of the date of transfer.
However, whenever a purchase at wholesale is made of any water
or wastewater sewer service and a fee tax is paid or payable
thereon by the selling utility and the utility purchasing such
water or wastewater sewer service resells the same directly to
customers, the purchasing utility shall be entitled to, and
shall receive, credit on such fees taxes as may be due by it
under this section to the extent of the fee tax paid or
payable upon such water or wastewater sewer service by the
utility from whom such purchase was made. All such fee tax
payments and penalties shall be deposited in accordance with
s. 350.113.

(2) The amount of the regulatory assessment fee shall
be no more than 4.5 percent of gross revenues derived from
intrastate business. The fee paid by water and wastewater
utilities shall be paid once a year as a part of the annual
financial report required by commission rules. In addition to
the penalties and interest otherwise provided for, utilities
may be penalized for failure to pay fees on a timely basis, in
accordance with s. 367.161.

Section 18. Notwithstanding the October 1, 1989,
repeal specified in section 119.14(3)(a), Florida Statutes,
section 367.156, Florida Statutes, is reenacted and amended to
read:

367.156 Public utility records; confidentiality.--
(1) The commission shall continue to have reasonable
access to all utility records and records of affiliates which
contain information on transactions or cost allocations
involving the utility and the affiliate which affect the
utility's rates or cost of service. Upon request of the

CODING: Words stricken are deletions; words underlined are additions.
utility or other person, any records received by the
commission or a party which are shown by such utility or
person and found by the commission to be proprietary
confidential business information shall be kept confidential
and shall be exempt from s. 119.07(1). This exemption is
subject to the Open Government Sunset Review Act in accordance
with s. 119.14.

(2) Discovery in any docket or proceeding before the
commission shall be conducted pursuant to the general
provisions governing discovery set forth in Rule 1.280 of the
Florida Rules of Civil Procedure. Information which affects a
utility's rates or cost of service shall be considered
relevant for purposes of discovery in any docket or proceeding
where the utility’s rates or cost of service are at issue.
The commission shall determine whether information requested
in discovery affects a utility's rates or cost of service.
Upon request of the public utility or other person, any
records asserted by the provider of the records or such other
person to contain proprietary confidential business
information and thus provided shall be treated by the
commission, office of the Public Counsel, or any other party
subject to the public records law as confidential and shall be
exempt from the provisions of s. 119.07(1) pending a formal
ruling on such request by the commission or return of the
records to the person providing such information. This
exemption is subject to the Open Government Sunset Review Act
in accordance with s. 119.14. In any-docket-or-proceeding
orders-protecting-a-public-utility-from-discovery-of
proprietary-confidential-business-information, upon a showing
by-the-utility-that-such-protection-is-necessary.--However, if

CODING: Words stricken are deletions; words underlined are additions.
the-commission-determines-that-discovery-of-proprietary
confidential-business-information-is-necessary-to-protect-the
public-interest-the-commission-shall-enter-an-order-limiting
such-discovery-in-the-manner-provided-for-in-Rule-1.286-of-the
Florida-Rules-of-Civil-Procedure.--Such-proprietary
confidential-business-information-shall-be-exempt-from-s;

(3) If the commission finds that discovery will
require disclosure of proprietary confidential business
information, the commission shall issue appropriate protective
orders to safeguard the confidentiality of such proprietary
confidential business information which shall be exempt from
s. 119.07(1). This exemption is subject to the Open
Government Sunset Review Act in accordance with s. 119.14.

(4) Proprietary confidential business information
includes, but is not limited to:

(a) Trade secrets.
(b) Internal auditing controls and reports of internal
auditors.
(c) Security measures, systems, or procedures.
(d) Information concerning bids or other contractual
data, the disclosure of which would impair the efforts of the
utility or its affiliates to contract for goods or services on
favorable terms.
(e) Employee personnel information unrelated to
compensation, duties, qualifications, or responsibilities.
(f) Information relating to competitive interests the
disclosure of which would impair the competitive business of
the provider of the information.

(5) Any finding by the commission that records contain
proprietary confidential business information shall be
effective for a period set by the commission, which may not exceed 18 months, unless the commission finds that the protection from disclosure provided by this section shall extend for a specified longer period. At the conclusion of the period so established, the records containing proprietary confidential business information shall be returned to the provider of the information or they no longer shall be exempt from s. 119.07(1), unless the public utility or affected person shows and the commission finds that the records continue to contain proprietary confidential business information. Upon such showing, the commission may extend the period for confidential treatment. This exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.14.

Section 19. Subsection (2) of section 367.161, Florida Statutes, is amended to read:

367.161 Penalties.--

(2) The commission has the power to impose upon any entity that is subject to its jurisdiction under this chapter and that is found to have refused to comply with, or to have willfully violated, any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than $5,000, which penalty shall be fixed, imposed, and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate of authorization issued by it. Each day that such refusal or violation continues constitutes a separate offense. Each penalty shall be a lien upon the real and personal property of the entity, enforceable by the commission as a statutory lien under chapter 85. The collected penalties shall be deposited into the General Revenue Fund unallocated.
Section 20. Section 367.165, Florida Statutes, is amended to read:

367.165 Abandonment.--It is the intent of the Legislature that water or wastewater sewer service to the customers of a utility not be interrupted by the abandonment or placement into receivership of the utility. To that end:

(1) No person, lessee, trustee, or receiver owning, operating, managing, or controlling a utility shall abandon the utility without giving 60 days' notice to the county or counties in which the utility is located and to the commission. Anyone who violates the provisions of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, or s.

775.084. Each day of such abandonment constitutes a separate offense. In addition, such act is a violation of this chapter, and the commission may impose upon the utility a penalty for each such offense of not more than $5,000 or may amend, suspend, or revoke its certificate of authorization; each day of such abandonment without prior notice constitutes a separate offense.

(2) After receiving such notice, the county, or counties acting jointly if more than one county is affected, shall petition the circuit court of the judicial circuit in which such utility is domiciled to appoint a receiver, which may be the governing body of a political subdivision or any other person deemed appropriate. The receiver shall operate the utility from the date of abandonment until such time as the receiver disposes of the property of the utility in a manner designed to continue the efficient and effective operation of utility service.
The notification to the commission under subsection (1) is sufficient cause for revocation, suspension, or amendment of the certificate of authorization of the utility as of the date of abandonment. The receiver operating such utility shall be considered to hold a temporary authorization from the commission, and the approved rates of the utility shall be deemed to be the interim rates of the receiver until modified by the commission.

Section 21. Subsections (1), (2), (3), and (4) of section 367.171, Florida Statutes, are amended, and subsection (7) is added to said section, to read:

367.171 Effectiveness of this chapter.--

(1) The provisions of this chapter shall become effective in a county of this state upon the adoption of a resolution by the board of county commissioners of such county, or, in counties operating under a countywide charter, by the appropriate board, declaring that such county is subject to the provisions of this chapter. Any board of county commissioners which adopts such a resolution shall immediately notify the commission of its adoption and submit the resolution to the commission. A county, after 10 continuous years under the jurisdiction of the commission, may by resolution or ordinance rescind any prior resolution or ordinance imposing commission jurisdiction and thereby exclude itself from the provisions of this chapter, except that the county may not exclude itself from the provisions of this section.

(2)(a) Within 30 days after this chapter becomes applicable to a county, each utility shall register by filing with the commission a written statement setting forth the full

CODING: Words stricken are deletions; words underlined are additions.
legal name of the utility, its mailing address, and a brief description of its area of service area.

(b) On the day this chapter becomes applicable to any county, any utility engaged in the operation or construction of a system shall be entitled to receive a certificate for the area served by such utility on the day this chapter becomes applicable to it. Rates and charges then in effect shall be deemed approved and shall remain in effect until changed by the commission. Within 90 days after the day this chapter becomes applicable to it, the utility shall make application for a certificate by filing with the commission:

1. A map of its existing system or system under construction;
2. A description of the area served by the system; and
3. A tariff listing all rates and charges and such other financial information as may be required by the commission.

Such application shall be accompanied by a fee as provided by s. 367.141. If a utility fails to register with the commission within the prescribed time, the commission may require that the utility apply for an original certificate of authorization in accordance with s. 367.045.

(c) Before the commission issues a certificate of authorization under paragraph (b), it may establish the amount of money prudently invested in property of the utility, which property is used and useful in the public service; may establish other elements of the rate base; and may set and approve rates pursuant to s. 367.081.

(3) In consideration of the variance of powers, duties, responsibilities, population, and size of

CODING: Words stricken are deletions; words underlined are additions.
municipalities of the several counties and in consideration of
the fact that every county varies from every other county and
thereby affects the functions, duties, and responsibilities
required of its county officers and the scope of
responsibilities which each county may, at this time,
undertake, the Counties of Alachua, Baker, Bradford, Calhoun,
Charlotte, Collier-Columbia Dade, BeSoto, Dixie, Escambia,
Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry,
Highlands, Hillsborough, Holmes, Indian River, Jefferson,
Lafayette, Leon, Levy, Liberty, Madison, Manatee, Marion,
Martin, Okaloosa, Okeechobee, Polk, St. Lucie, Santa Rosa, St-
Johns, Sarasota, Sumter, Suwannee, Taylor, Union, Wakulla; and
Walton Washington are excluded from the provisions of this
chapter until such time as the board of county commissioners
of any such county, acting pursuant to the provisions of
subsection (1), makes this chapter applicable to such county
or until the Legislature, by appropriate act, removes one or
more of such counties from this exclusion. Each county which
is excluded from the provisions of this chapter by this
subsection shall regulate the rates of all utilities in that
county which would otherwise be subject to regulation by the
commission pursuant to ss. 367.08111, (2), (3), and (6). For
this purpose the county or its agency shall proceed as though
the county or agency is the commission.

(4) As of the day a utility is no longer regulated by
the commission under this chapter, each such utility which is
engaged in the operation or construction of a system shall be
entitled to receive from the county in which it is located and
operating a certificate of authorization for each area for
which such utility held a certificate of authorization from
the commission on the day the utility became subject to
regulation by the county. The utility will make application by filing with the governing body of the county:

(a) A map of its existing system or system under construction;

(b) A certified copy of the certificate issued by the commission, including a legal description of the area for which the certificate was issued;

(c) A tariff, listing all rates and charges then in effect, which shall remain in effect until thereafter lawfully changed;

(d) A copy of the operating regulations and procedures of the utility then in effect, which shall remain in effect until thereafter lawfully changed; and

(e) The then-current rate base of the utility, which shall then continue to be the rate base of the utility until thereafter lawfully changed.

(7) Notwithstanding anything in this section to the contrary, the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional.

Section 22. Section 367.182, Florida Statutes, is amended to read:

367.182 Saving clause.--All certificates and authorizations valid on the effective date of chapter 80-99, Laws of Florida, shall remain in full force and effect. Henceforth, all certificates and authorizations shall be applied for and renewed in accordance with this act.

Section 23. Sections 367.041, 367.051, 367.055, and 367.061, Florida Statutes, are hereby repealed.

CODING: Words stricken are deletions; words underlined are additions.
Section 24. Notwithstanding the provisions of the Regulatory Sunset Act or of any other provision of law which provides for review and repeal in accordance with s. 11.61, Florida Statutes, and except as otherwise specifically provided herein, chapter 367, Florida Statutes, shall not stand repealed on October 1, 1989, and shall continue in full force and effect as amended herein.

Section 25. Chapter 367, Florida Statutes, is repealed on October 1, 1999, and shall be reviewed by the Legislature pursuant to s. 11.61, Florida Statutes.

Section 26. This act shall take effect October 1, 1989.

CODING: Words stricken are deletions; words underlined are additions.
Revises chapter 367, F.S., relating to the regulation of water and sewer systems. Saves the chapter from Sunset repeal scheduled for October 1, 1989, and provides for future review and repeal on October 1, 1999.

Provides definitions. Revises exemptions from the provisions of the chapter, and provides an exemption for wastewater treatment plants operated exclusively for disposing of industrial wastewater. Requires utilities to obtain certificates of authorization prior to issuance of permits by the Department of Environmental Regulation or a water management district. Specifies a time period for grant or denial of an application by the Public Service Commission. Provides certificate of authorization application and amendment procedures. Provides for objections and hearings.

Requires certain notice prior to revocation, suspension, transfer, or amendment of a certificate of authorization. Revises provisions relating to sale, assignment, or transfer of a certificate of authorization, facilities, or control. Provides a penalty for transfer prior to commission approval. Provides for discontinuation and refund of interim rates. Requires the continued service of systems obtained through foreclosure. Revises procedures for fixing and changing utility rates, and provides considerations and restrictions. Revises certain notice requirements. Provides for staff assistance to a utility in changing rates and charges, and provides procedures. Provides for collection of interim rates under escrow or a letter of credit.

Extends time for commission determination of official date of filing or for issuance of another statement of deficiencies. Requires certain commission rate adjustment orders to be reduced to writing and requires certain notice. Provides for application for new class of service. Prohibits collection of rates or charges that have not been approved by the commission. Revises provisions relating to charges and conditions for service availability. Authorizes reduction of a utility's return on equity if certain standards are not met.

Provides for referral of certain proceedings to the Division of Administrative Hearings of the Department of Administration. Provides for payment of a regulatory assessment fee according to a specified schedule. Provides for commission access to utility records. Provides discovery procedures. Revises exemptions from public records requirements for proprietary confidential business information, saves said exemptions from repeal under the Open Government Sunset Review Act, and provides for future review and repeal.

Revises provisions relating to the effectiveness of chapter 367, F.S., in certain counties. Provides procedure if a utility fails to register within the
prescribed time. Revises the list of excluded counties and provides for regulation therein by the county. Provides for regulation by the commission of utility services which transverse county boundaries. Revises a saving clause. Repeals provisions relating to application for certification, issuance of certificate, application for deletion of territory, and extension of certificate.

This publication was produced at an average cost of 1.12 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

CODING: Words stricken are deletions; words underlined are additions.