

FLORIDA PUBLIC SERVICE COMMISSION
Capital Circle Office Center • 2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

M E M O R A N D U M

August 22, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF APPEALS (CALDWELL) *auc DES*
DIVISION OF WATER & WASTEWATER (MESSER, WILLIAMS) *rew*
DIVISION OF RESEARCH & REGULATORY REVIEW (HEWITT) *OCB*

RE: DOCKET NO. 960933-WS - PROPOSED REPEAL OF RULE 25-30.060,
F.A.C., APPLICATION FOR EXEMPTION FROM REGULATION OF
NONJURISDICTIONAL FINDING

AGENDA: SEPTEMBER 3, 1996 - REGULAR AGENDA - RULE PROPOSAL -
INTERESTED PERSONS MAY PARTICIPATE

RULE STATUS: PROPOSAL MAY BE DEFERRED

SPECIAL INSTRUCTIONS: S:\PSC\APP\WP\960933.RCM

CASE BACKGROUND

In its 1996 Session, the Legislature amended Section 367.031, Florida Statutes, to eliminate the requirement that an order recognizing a system is exempt from regulation as provided by Section 367.022, F.S., be issued by the Commission. This amendment has the effect of eliminating the need for applications and subsequent orders for exemptions such as: bottled water, governmental entities, public lodging and landlords providing service to guests and tenants, small systems, and non-profit corporations, to name a few.

This legislative action was accompanied by a budget cut to the agency which eliminated positions. The Division of Water and Wastewater and the Division of Legal Services are discontinuing the "exception" program, and are, therefore, proposing to repeal the existing rules that apply to the program.

DISCUSSION OF ISSUES

ISSUE 1: Should the Commission propose the repeal of Rule 25-30.060, Florida Administrative Code, Application for Exemption from Regulation or Non-Jurisdictional Finding?

DOCUMENT NUMBER-DATE

08919 AUG 22 96

FPSC-RECORDS/REPORTING

DOCKET NO. 960933-WS
DATE: August 22, 1996

RECOMMENDATION: Yes.

STAFF ANALYSIS: The repeal of Rule 25-30.060, F.A.C., would implement the statutory change which eliminates the requirement for a Commission order authorizing exemptions as defined in Section 367.022, F.S. The effect of the repeal is to eliminate the filing of applications by those entities defined in Section 367.022, F.S., and the review by staff and issuance of an order for these exemptions.

Economic Impact: The repeal of the rule would decrease Commission staff paperwork and no additional significant costs or adverse impacts have been identified, therefore there is no need for preparation of an economic impact statement for the proposed rule repeal.

ISSUE 2: If no requests for hearing or comments are filed, should the rule as proposed be filed for repeal with the Secretary of State and the docket be closed?

RECOMMENDATION: Yes.

STAFF ANALYSIS: Unless comments or requests for hearing are filed, the rule repeal as proposed may be filed with the Secretary of State without further Commission action. The docket may then be closed.

Attachments

Proposed Rule Draft
Economic Impact Statement

1
2 25-30.060 Application for Exemption from Regulation or
3 Nonjurisdictional Finding.

4 ~~(1) Each application for an exemption shall be filed in~~
5 ~~original and four copies, with the Director, Division of Records~~
6 ~~and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida~~
7 ~~32399-0870. Sample application forms may be obtained from the~~
8 ~~Division of Water and Wastewater, 2540 Shumard Oak Boulevard,~~
9 ~~Tallahassee, Florida 32399-0850.~~

10 ~~(2) Each application for an exemption from regulation~~
11 ~~shall contain the following information:~~

12 ~~(a) The name of the system owner;~~

13 ~~(b) The physical address of the system;~~

14 ~~(c) The mailing address of the applicant, if different~~
15 ~~from the system address;~~

16 ~~(d) The name, address, and phone number of the primary~~
17 ~~contact person for the exemption request;~~

18 ~~(e) The nature of the applicant's business organization,~~
19 ~~e.g., corporation, partnership, limited partnership, sole~~
20 ~~proprietorship, association, and~~

21 ~~(f) A statement that the applicant is aware that pursuant~~
22 ~~to Section 837.06, Florida Statutes, whoever knowingly makes a~~
23 ~~false statement in writing with the intent to mislead a public~~
24 ~~servant in the performance of his official duty shall be guilty of~~

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2 ~~a misdemeanor of the second degree, punishable as provided in s.~~
3 ~~775.082 or s. 775.083.~~

4 ~~(3) Each application must specifically state which type~~
5 ~~of exemption is being applied for and contain one of the following:~~

6 ~~(a) For an exemption pursuant to Section 367.022(1),~~
7 ~~Florida Statutes, a statement from the owner of the system that the~~
8 ~~system is used solely to provide bottled water and that water is~~
9 ~~not provided to customers through a water main or service pipe;~~

10 ~~(b) For an exemption pursuant to Section 367.022(2),~~
11 ~~Florida Statutes, a statement from the governmental authority~~
12 ~~specifying the statutory authority for the governmental authority;~~
13 ~~that the system is owned, operated, managed, or controlled by the~~
14 ~~governmental authority; and stating whether it provides water~~
15 ~~service, wastewater service or both. The applicant shall describe~~
16 ~~with particularity the nature of the ownership, operation,~~
17 ~~management, and control of the system;~~

18 ~~(c) For an exemption pursuant to Section 367.022(3),~~
19 ~~Florida Statutes, a statement from the manufacturer that service is~~
20 ~~provided solely in connection with its operations; and stating~~
21 ~~whether it provides water service, wastewater service or both;~~

22 ~~(d) For an exemption pursuant to Section 367.022(4),~~
23 ~~Florida Statutes, a statement from the public lodging establishment~~
24 ~~that service is provided solely in connection with service to its~~
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2 ~~guests; and stating whether it provides water service, wastewater~~
3 ~~service or both;~~

4 ~~(e) For an exemption pursuant to Section 367.022(5),~~
5 ~~Florida Statutes, a statement from the landlord that it provides~~
6 ~~service solely to tenants; that charges for service are~~
7 ~~non specifically contained in rental charges; and stating whether~~
8 ~~it provides water service, wastewater service or both. A copy of~~
9 ~~the landlord's most recent version of a standard lease or rental~~
10 ~~agreement shall be submitted with the application;~~

11 ~~(f) For an exemption pursuant to Section 367.022(6),~~
12 ~~Florida Statutes, a statement from the owner of the system that the~~
13 ~~system has or will have the capacity to serve 100 or fewer persons;~~
14 ~~and stating whether it provides water service, wastewater service~~
15 ~~or both. The applicant shall submit documentation verifying the~~
16 ~~capacity of the system(s). For a wastewater system, the capacity of~~
17 ~~both the treatment and disposal facilities shall be documented;~~

18 ~~(g) For an exemption pursuant to section 367.022(7),~~
19 ~~Florida Statutes, a statement that it provides service solely to~~
20 ~~members who own and control it; and stating that it provides water~~
21 ~~service, wastewater service or both.~~

22 ~~1. When the applicant is a condominium formed pursuant to~~
23 ~~the Condominium Act, Chapter 718, Florida Statutes, it must~~
24 ~~provide:~~

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2 ~~a. A copy of the certificate obtained from the Secretary~~
3 ~~of State showing that it is formed under Chapter 718, Florida~~
4 ~~Statutes;~~

5 ~~b. A statement as to whether the applicant's articles of~~
6 ~~incorporation and bylaws contain the requirements for turnover of~~
7 ~~control of the condominium to the nondeveloper members as set out~~
8 ~~in Chapter 718, Florida Statutes. If turnover of control has not~~
9 ~~occurred, a statement as to the date turnover of control to the~~
10 ~~nondeveloper members is expected to occur.~~

11 ~~2. When the applicant is a cooperative formed pursuant to~~
12 ~~the Cooperative Act, Chapter 719, Florida Statutes, it must~~
13 ~~provide:~~

14 ~~a. A copy of the certificate obtained from the Secretary~~
15 ~~of State showing that it is formed under Chapter 719, Florida~~
16 ~~Statutes;~~

17 ~~b. A statement as to whether the applicant's articles of~~
18 ~~incorporation and bylaws contain the requirements for turnover of~~
19 ~~control of the cooperative to the nondeveloper members as set out~~
20 ~~in Chapter 719, Florida Statutes. If turnover of control has not~~
21 ~~occurred, a statement as to the date turnover of control to the~~
22 ~~nondeveloper members is expected to occur.~~

23 ~~3. When the applicant is a nonprofit corporation formed~~
24 ~~pursuant to Chapter 617, Florida Statutes, it must provide:~~

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2 ~~a. The articles of incorporation as filed with the~~
3 ~~Secretary of State and the bylaws which documents must demonstrate~~
4 ~~that it provides service solely to members who own the corporation;~~

5 ~~b. A description of the voting rights and their location~~
6 ~~in the articles of incorporation and the bylaws. The voting rights~~
7 ~~shall be one vote per unit of ownership or other voting rights if~~
8 ~~the Commission finds they are fair and nondiscriminatory so that~~
9 ~~members have equitable control of the corporation.~~

10 ~~c. In circumstances where the applicant is a nonprofit~~
11 ~~corporation formed by a developer pursuant to Chapter 617, Florida~~
12 ~~Statutes, it must provide documentation showing that control has~~
13 ~~passed or, if not, the circumstances under which control of the~~
14 ~~corporation will pass to the nondeveloper members. The time must~~
15 ~~not exceed seven years from the date of incorporation unless the~~
16 ~~Commission finds that special circumstances justify a longer time.~~

17 ~~(h) For an exemption pursuant to Section 367.022(8),~~
18 ~~Florida Statutes, a statement from the reseller that service is~~
19 ~~provided at a rate or charge that does not exceed the actual~~
20 ~~purchase price; stating that the reseller is aware of the~~
21 ~~requirements of Rule 25 30.111, Florida Administrative Code;~~
22 ~~stating that the reseller is aware of the requirements of Section~~
23 ~~367.122, Florida Statutes, and Rules 25 30.262, .263, .264, .265,~~
24 ~~.266 and .267, Florida Administrative Code, relating to examination~~
25 ~~and testing of meters; and stating whether it provides water~~

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2 ~~service, wastewater service or both. The reseller must also provide~~
3 ~~the name of the utility providing service to it and that utility's~~
4 ~~current rates and charges. The reseller must submit a schedule of~~
5 ~~all of its proposed rates and charges, an explanation of the~~
6 ~~proposed method of billing customers, separately, for both water~~
7 ~~and wastewater, and a schedule showing that the amount billed will~~
8 ~~not exceed the amount paid for water, wastewater, or both;~~

9 ~~(i) For an exemption pursuant to Section 367.022(9),~~
10 ~~Florida Statutes, a statement from the owner of the wastewater~~
11 ~~system that the system is primarily for the treatment of wastewater~~
12 ~~other than domestic wastewater, such as runoff and leachate from~~
13 ~~areas that receive pollutants associated with industrial or~~
14 ~~commercial storage, handling or processing; and identifying the~~
15 ~~principal source or nature of such wastewater;~~

16 ~~(j) For a nonjurisdictional finding pursuant to Section~~
17 ~~367.021(12), Florida Statutes, a statement from the system owner~~
18 ~~stating that it does not charge for providing utility service;~~
19 ~~specifying how operational costs of providing service are treated~~
20 ~~or recovered; and stating whether it provides water service,~~
21 ~~wastewater service, or both.~~

22
23 Specific Authority 350.127(2), 367.121(1) FS.

24 Law Implemented 367.021(12), 367.022, 367.031 FS.

25 History--New 1-5-92, Amended 11-30-93, 2-15-96.

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MEMORANDUM

July 22, 1996

TO: DIVISION OF APPEALS (CALDWELL)

FROM: DIVISION OF RESEARCH AND REGULATORY REVIEW (HEWITT) (CBH) *Handwritten initials*

SUBJECT: ECONOMIC IMPACT STATEMENT FOR PROPOSED REVISIONS TO RULE 25-30.060, FAC, APPLICATION FOR EXEMPTION FROM REGULATION OR NONJURISDICTIONAL FINDING

The proposed rule changes would reflect recent statutory changes to Section 367.031, F.S., that eliminated the requirement that the Commission issue an order recognizing a system is exempt. The statute should be "self executing." Any complaints or problems arising from purported exempt systems would be handled under other rules and procedures.

Florida Statutes require an agency to prepare an economic impact statement if a rule revision results in any "substantial increase in costs" or "significant adverse effects" to the parties directly affected, including state and local governmental entities. Since the revisions would decrease Commission staff paperwork and no additional significant costs or adverse impacts have been identified, there is no need for preparation of an EIS for the proposed rule changes.

Please keep my name on the CASR.

CBH:tf\e-memo96
cc: Mary Andrews Bane
Hurd Reeves