

STORAGE NAME: h1887c.wrm

DATE: April 12, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
WATER AND RESOURCE MANAGEMENT
ANALYSIS**

BILL #: HB 1887

RELATING TO: Water and Wastewater

SPONSOR(S): Committee on Utilities and Communications and Rep. Rojas

COMPANION BILL(S): SB 2234 (s)

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

- (1) UTILITIES AND COMMUNICATIONS YEAS 11 NAYS 0
- (2) WATER AND RESOURCE MANAGEMENT YEAS 10 NAYS 0
- (3) TRANSPORTATION AND ECONOMIC DEVELOPMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

HB 1887 deletes limited regulatory language relating to resellers which are exempt entities not subject to Public Service Commission (PSC) regulation.

The bill authorizes the PSC, in staff-assisted rate cases involving water and wastewater utilities whose gross annual revenues are \$150,000 or less, to allow the collection of interim rates until the effective date of the final order. Such interim rates may be based on a test period different from the test period used in the request for permanent rate relief. To establish interim relief, the utility must demonstrate that the operation and maintenance expenses exceed the revenues of the regulated utility.

The bill provides that the interim rates shall not exceed the level necessary to cover operation and maintenance expenses as defined by the National Association of Regulatory Utilities Commissioners, (NARUC), Systems of Operations.

The bill provides the PSC with the discretion to require the difference between the interim rates and the previously authorized rates to be secured.

The bill provides that if a utility becomes exempt from PSC regulation during the pendency of a staff assisted rate case, the request for rate relief is deemed withdrawn.

The bill provides that in a staff assisted rate case if interim rates were previously approved they shall become final. Further, if temporary rates were previously approved, the rates are discontinued and any money collected pursuant to the temporary rates, or the difference between temporary and approved interim rates, must be refunded to customers of the utility with interest.

The bill conforms terms relating to rate case procedures.

The bill provides an effective date.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 367, Florida Statutes, provides for the regulation of water and wastewater systems. Prior to July 1, 1996, s. 367.031, F.S., required each utility system to obtain an order from the Public Service Commission, (PSC), acknowledging that the system was exempt from PSC regulation as provided by s. 367.022, F.S.

After July 1, 1996, s. 367.031, F.S., was amended to no longer require a utility to obtain a PSC order to demonstrate regulation exempt status.

Among the entities not subject to PSC regulation, as a utility as provided in s. 367.022, F.S., are resellers. An example of a water wastewater reseller is an apartment complex. Subsection (8) provides:

(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.

This current language continues to require a level of review and analysis by the PSC of a regulation exempt entity.

First, the reseller is required to submit an annual report to the PSC. The report has a negative effect because the PSC lacks regulation authority.

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

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

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

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

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

This section allows for the final order of the PSC to be rendered within eight months.

In between that time, if the utility feels it is earning outside the range of reasonableness on its rate of return, the PSC may, within 60 days of filing an interim request, authorize the collection of interim rates until the effective date of its final order. See s. 367.082, F.S. The records and documents for obtaining interim rates are based on another operating year's compilation of information (test year).

These interim rates are sufficient to earn the minimum of the range of rate of return, and the difference between the interim rates and the last authorized subject commission rates are collected under bond, escrow, letter of credit, or corporate undertaking, subject to refund with interest at a rate ordered by the PSC.

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

The commission may establish rules by which a water or wastewater utility whose gross annual revenues are \$150,000 or less may request and obtain staff assistance for the purpose of changing its rates and charges.

This section allows for the final order of the commission to be rendered within 15 months.

In between that time, if the utility feels it is earning outside the range of reasonableness on its rate of return, the PSC may, within 60 days of filing an interim request, authorize the collection of interim rates. However, the revenue difference between Class C utilities and Classes A and B, is that Class C utilities are unable to obtain a security instrument to cover the difference between interim rates and the last authorized PSC rate. They also cannot supply the documentation and records for a different operating year, (test year), for the PSC upon which to base interim rate without hiring outside experts to compile the record. If the utilities could afford it, they would not require PSC staff assistance for the permanent rate proceeding.

According to the PSC, Class C utilities that are in a permanent rate proceeding and unable to obtain security for interim rates, have received emergency rates, in some cases, where system maintenance is in jeopardy. These emergency rates are based on the PSC's police authority to protect the public health, safety, and welfare.

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

Finally, the PSC has exclusive jurisdiction, for the economic and service territory regulation, over investor-owned water and wastewater utilities, as well as, the quality of their service in counties that have ceded regulatory authority pursuant to chapter 367, F.S.

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

As previously stated, s. 367.022, F.S., lists the entities that are not subject to regulation by the PSC as a utility nor are they subject to the provisions of chapter 367.

Section 367.081, F.S., outlines the procedures for a rate proceeding. During a rate proceeding, the PSC may, upon its own motion or party petition, or tariff filing, authorize the collection of interim rates until the effective date of the final order. See s. 367.082, F.S.

Also, s. 367.082(7), F.S., states that if the utility becomes exempt from PSC regulation or jurisdiction during the pendency of a rate case, the request for rate relief pending before the PSC 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 367.0814, F.S., outlines a PSC staff-assisted rate proceeding. If a utility becomes exempt from PSC 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.

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

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

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

An inconsistency exists in sections 367.0814, 367.082, and 367.171(5), Florida Statutes. Despite the discord, the PSC does complete pending cases if there is change in jurisdiction, but not if there is a change in regulation.

B. EFFECT OF PROPOSED CHANGES:

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

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

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

The bill corrects an inconsistency in the statutes and provides that only utilities which become exempt entities during the pendency of a case shall have that case deemed withdrawn and any interim or temporary rates collected returned with any applicable interest.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

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

No.

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

No.

b. If an agency or program is eliminated or reduced:

No agency or program is eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

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

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 367.022, 367.0814, 367.082, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: The bill deletes the provisions in s. 367.022(8), F.S., requiring resellers of water and wastewater to file justifying exempt documentation with the PSC.

Section 2: The bill provides that the PSC, either by its own motion, or by petition of the regulated utility, may authorize interim rate relief in staff assisted rate cases, based on a test period different from the test period used for permanent rate relief, until the effective date of the final order for permanent rates. The interim rate relief will be contingent upon a demonstration by the utility that the operation and maintenance expenses exceed its revenues, but the interim rates will not exceed the level necessary to cover operation and maintenance expenses. The bill further provides, in staff assisted rate cases, that the PSC has the discretion of requiring the difference between the utility's previously authorized rates and interim rates be secured by bond, escrow, letter of credit, or corporate undertaking subject to refund with interest at a rate ordered by the PSC.

Section 3: The bill corrects an inconsistency in the statutes and provides that only utilities which become exempt entities during the pendency of a case shall have that case deemed withdrawn and any interim or temporary rates collected returned with any applicable interest.

Section 4: The act will take effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

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

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

HB 1887 does not require counties or municipalities to expend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

HB 1887 does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

HB 1887 does not reduce the percentage of state tax shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 8, 1999, the Committee on Water and Resource Management adopted one amendment and one amendment to the amendment to HB 1887.

The main amendment incorporated SB 1494 by Senator Saunders and additional language. The amendment:

- Redefines governmental authority to include nonprofit corporations formed for the purpose of acting on behalf of a political subdivision for water or wastewater facilities and exempts these nonprofit corporations from PSC regulation.
- Simplifies the exemption from PSC regulation for resellers of water or wastewater services.
- Adds an additional provision to the exemption from PSC regulation for the sale for resale of bulk supplies of water to a governmental authority or to a utility to include the sale for resale of wastewater services.

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- Provides that the sale of a certificate of authorization, facilities, or majority organizational control may occur prior to PSC approval if the contract is made contingent on commission approval.
- Requires that counties and municipalities be contiguous in order to form authorities.
- Removes the provision that public utility rates must be reduced following the four year recovery period by the amount of the rate case expenses included in the rates.

The amendment to the amendment removed the requirement that counties and municipalities must be contiguous in order to form authorities from the main amendment.

The two amendments are traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Staff Director:

Wendy G. Holt

Patrick L. "Booter" Imhof

AS REVISED BY THE COMMITTEE ON WATER AND RESOURCE MANAGEMENT:

Prepared by:

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Kellie R. Ralston

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