

**STORAGE NAME:** h0625.uco

**DATE:** March 31, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
UTILITIES AND COMMUNICATIONS  
ANALYSIS**

**BILL #:** HB 625

**RELATING TO:** Water and Wastewater

**SPONSOR(S):** Representative Russell

**COMPANION BILL(S):** SB 926

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

- (1) UTILITIES AND COMMUNICATIONS
  - (2) COMMUNITY AFFAIRS
  - (3) FINANCE AND TAXATION
  - (4)
  - (5)
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**I. SUMMARY:**

The bill provides that by resolution the governing body of a county may approve or disapprove rates determined by the Public Service Commission (PSC) for water or wastewater service.

The bill provides that a county governing body has five days after the adoption of a water or wastewater resolution to notify the PSC of its determination.

The bill provides that after the PSC has approved a change in water or wastewater rates that it notify a county's governing body at least 40 days before the change is to take effect.

The bill establishes, with exceptions, that if a county governing body does not respond to the PSC's proposed change within 30 days the change does not take effect.

The bill provides that rates for water and wastewater that are in effect on January 1, 2000, shall continue until changed in accordance with this act.

The bill appears to have an indeterminate fiscal impact.

The bill takes effect January 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 367.011, Florida Statutes, provides in part that:

(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. . .

(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. . .

Section 367.171(1), Florida Statutes, provides in part that:

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. . . 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.

The PSC currently has jurisdiction over 344 companies, and these companies operate more than 1300 separate systems. Four companies physically cross county boundaries, and two other companies have been found operationally functioning across county boundaries.

Currently, in the event of a protest or challenge to a PSC decision, pursuant to s. 120.57, F.S., parties and intervenors are afforded a s. 120.57, F.S., evidentiary hearing, with the development of a record. This hearing is usually held by the PSC. Appeals may be filed with the First District Court of Appeal.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 125.01, F.S. to provide that after a county is notified by the PSC that it has tentatively approved a change in water or wastewater rates, a county's governing body has the authority, within 30 days, to adopt a resolution to approve or disapprove the proposed rate change.

The bill amends s. 367.081, F.S., to require the PSC to notify the county governing body at least 40 days prior to the effective date of an approved PSC water or wastewater rate change for a utility in that county, in order for the county to adopt a resolution of approval or disapproval. If the governing body fails to approve the change within 30 days of the notification, the proposed change may not take effect. The proposed change may only be implemented with the approval of the county governing body.

The bill provides that the governing body of the county must notify the PSC of its action within 5 days of adopting the resolution.

The bill provides for exceptions to the requirement of board approval. They are:

- 1) When a rate change is the result of a price increase or decrease index.
- 2) When rates are interim pursuant to a s. 367.082, F.S., rate case.

The bill further establishes that, absent county governing body approval, water or wastewater rates in effect on January 1, 2000 shall remain in effect.

The bill takes effect January 1, 2000.

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?

The bill changes the PSC's statutory authority to regulate jurisdictional utilities.

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

The PSC would be required to postpone implementation of any rate changes until a county governing body has given its approval or disapproval, with exceptions for those rate changes which are the result of a price index, or the result of interim rates pursuant to a s. 367.083, F.S., rate case.

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

No.

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

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

The regulation of water and wastewater rates would rest with county governing bodies.

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

None.

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

It is unclear how accountability is measured.

It is also unclear whether the county is bound by the provisions of Chapter 367, F.S., or whether it is allowed to develop its own rate making procedures.

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:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

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

N/A

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

N/A

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

No.

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

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 125.01, 367.081, 367.011, Florida Statutes

E. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate.

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:

Indeterminate.

2. Direct Private Sector Benefits:

None.

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

None.

D. **FISCAL COMMENTS:**

According to the PSC, it would incur some nominal additional cost for noticing counties. Also, the additional PSC action that would be needed if a county disapproved rates is presently unknown, but additional workload, legal costs and possible travel expense are anticipated.

The PSC projects that any additional hearings, meetings, or litigation needed by a utility to resolve rates disapproved by the county could result in additional rate case expense.

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

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

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

This bill does not reduce the state tax shared with counties or municipalities.

V. COMMENTS:

It is unclear which county would have the deciding authority when a utility serves across county lines.

It is unclear whether any recourse exists for the utility or the PSC in the event of county disapproval. It is also unclear the length of time applicable to that recourse.

According to the PSC, it is unclear how the utility or the PSC proceeds in the event of no action on the county's part. Further, what, if any, jurisdiction would the PSC have in dealing with the county.

Additionally, in the PSC's procedures for a rate case, the county would receive a copy of the petition as well as a rate case synopsis. At which time the county may participate in the hearing, or may request PSC staff to explore its concerns relating to the hearing. It is the PSC's concern that allowing the county to inject its concerns after a hearing, runs counter to the due process requirements of ch. 120, F.S.

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Also, the PSC is concerned whether delays outside of its control in implementing final rates raise the issue of an unconstitutional taking of revenue rightfully due a utility which could result in costly court appeals and litigation.

Further, the PSC projects that delays in receiving rate increases could negatively impact the financial viability of the utility and could lead to problems in quality of service and the ability of the utility to meet health and environmental standards.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Staff Director:

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