

STORAGE NAME: h0329s1a.ca

DATE: April 12, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: CS/HB 329

RELATING TO: Public Utility Rate Case Expenses

SPONSOR(S): Committee on Utilities & Communications; Rep. Fiorentino and others

TIED BILL(S):

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

- (1) UTILITIES & COMMUNICATIONS (CAC) YEAS 10 NAYS 0
 - (2) COMMUNITY AFFAIRS (PRC) YEAS 8 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill provides that under certain circumstances a public utility's rate shall be reduced by the amount of its rate case expense. The bill provides that rate reductions shall occur at the end of the recovery period. If rates are collected after the recovery period, and are in excess of the recovery amount, the utility shall make refunds to its customers by the reduced amount. The bill clarifies that if reductions are not made by the utility, in such over charge cases, the PSC shall make a separate determination of the utility's rate case expense, at the conclusion of the recovery period. If the utility for the 12-month period ending with the conclusion of the recovery period, is at or above the bottom of the utility's authorized range of return, the PSC shall reduce the utility's rate and require refunds be made to customers by the reduced amount.

The bill subjects county rate proceedings to certain provisions of the Administrative Procedures Act. The bill also adds noticing requirements for municipalities that propose to change their water or sewer rates, charges, or fees.

The bill does not appear to have a fiscal impact on state government. Municipalities may incur additional costs associated with the noticing requirements of the bill. County governments that regulate public utilities may incur additional costs resulting from administrative challenges under the provisions of the Administrative Procedures Act.

The bill shall take effect upon becoming a law and will operate retroactively to June 11, 1999.

The Committee on Community Affairs adopted one amendment that is traveling with the bill. As discussed in the "AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES" section of the analysis, the amendment is a strike all amendment that replaces the public notice and meeting requirements provision in the bill with a requirement that the utility provide notice to customers. The amendment also deletes the changes made in the treatment of rate case expenses.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Water and Wastewater Utilities

Water and wastewater utilities may be divided into two ownership categories: (1) investor-owned or privately held utilities and (2) government-owned utilities. Under Chapter 367, F.S., the Florida Public Service Commission (PSC) exercises exclusive jurisdiction over the economic regulation of investor-owned and private water and wastewater utilities, with the exception of those utilities that are regulated by counties that opt to retain regulatory jurisdiction. Government owned utilities are generally exempt from PSC regulation.

County Regulation

Under s. 367.171, F.S., any local county government has the option to provide economic regulation of the privately owned water and wastewater utilities operating in its county, or to cede jurisdiction of these utilities over to the PSC. Of Florida's 67 counties, thirty-six counties have elected to transfer jurisdiction of water and wastewater utilities to the PSC. Thirty-one have not ceded regulatory jurisdiction over to the PSC.

County home rule powers include the authority to regulate and provide water and wastewater services. Although a county may be exempt from PSC jurisdiction over water and wastewater utilities within its borders, certain portions of chapter 367, F.S., still apply to county regulated utilities. Section 367.171(8), F.S., provides as follows:

Each county which is excluded from the provisions of this chapter 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(1), (2), (3), and (6). For this purpose the county or its agency shall proceed as though the county or agency is the commission.

County regulation of utility rates and charges is generally pursuant to ordinance of the board of county commissioners. Subsequent modification to a utility's rates and charges is generally by ordinance or resolution. Such actions are not subject to the provisions of chapter 120, F.S., the Administrative Procedures Act, including s. 120.569, F.S., relating to decisions which affect substantial interests, and s. 120.57, F.S., relating to additional procedures for particular cases.

Rate Setting

Sections 367.081(1), (2), (3), and (6), F.S., relate to the establishment of rates by the PSC. A utility may only charge rates and charges which have been approved by the PSC or the county. Section 367.081(2)(a), F.S., provides, in part, that the PSC or a county shall "fix rates which are just, reasonable, compensatory, and not unfairly discriminatory.

In addition to other costs included in rate cases, expenses incurred by utilities in bringing a rate case, such as fees for attorneys, accountants, consultants, and experts, are included in the rate case. Such costs are referred to as rate case expenses.

Section 367.081(7), F.S., provides:

The commission shall determine the reasonableness of rate case expenses and shall disallow all rate case expenses determined to be unreasonable. No rate case expense determined to be unreasonable shall be paid by a consumer. In determining the reasonable level of rate case expense the commission shall consider the extent to which a utility has utilized or failed to utilize the provisions of paragraph (4)(a) or paragraph (4)(b) and such other criteria as it may establish by rule.

Section 367.0816, F.S., provides that the amount of utility rate case expense allowed by the PSC shall be amortized over a four-year recovery period. Prior to 1999, it also provided that at the end of the recovery period, the utility would be required to reduce its rates by the amount of rate case expense included in its rates. This requirement was stricken in 1999 by s. 6 of chapter 99-319, Laws of Florida.

Municipal Water and Wastewater Utilities

Municipalities may provide water and wastewater utilities pursuant to their home rule powers. Chapter 180, F.S., relating to municipal public works, also provides authority for cities to provide water and wastewater services. As noted above, such services are exempt from regulation under chapter 367, F.S.

Section 166.041, F.S., describes procedures relating to the adoption of municipal ordinances and resolutions, to include the following:

- (3) (a) . . . a proposed ordinance may be read by title, or in full, on at least 2 separate days and shall, at least 10 days prior to adoption, be noticed once in a newspaper of general circulation in the municipality. The notice of proposed enactment shall state the date, time, and place of the meeting; the title or titles of proposed ordinances; and the place or places within the municipality where such proposed ordinances may be inspected by the public. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

Section 166.041, F.S., does not contain any language specifically addressing ordinances which affect the rates, charges, or fees of water or sewer utilities.

C. EFFECT OF PROPOSED CHANGES:

This bill provides that if the PSC determines that a public utility earned a rate of return at or above the bottom of the range of its current authorized rate of return, for the 12-month period ending with the conclusion of the recovery period, the utility's rate must be reduced by the amount of the rate case expense, which was allowed to be collected over a four-year amortized recovery period. In the PSC's determination, the rate case expense must not be included. The bill provides that rate reductions must occur at the end of the recovery period. If rates are collected after the recovery period, and are in excess of the recovery amount, refunds by the reduced amount must be made to the utility's customers.

The bill clarifies that if reductions are not made by the utility, in such over charge cases, the PSC must make a separate determination of the utility's rate case expense, at the conclusion of the recovery period. If the utility for the 12-month period ending with the conclusion of the recovery period, is at or above the bottom of the utility's authorized range of return, the PSC must reduce the utility's rate and require refunds to customers by the reduced amount.

The bill provides that county rate proceedings are subject to the provisions of ss. 120.569 and 120.57, F.S., which provide hearing procedures under the Administrative Procedures Act.

The bill provides that for every municipality that provides utility services, the governing body for such municipality must direct its clerk to create and maintain a list of persons, who have requested in writing to be notified of any municipal ordinances that seek to change water or sewer rates, charges, or fees. This list of customers and real property owners is to be kept available for public inspection during the clerk's regular business hours. The bill also requires that the notices include the substance of the proposed ordinance and the time and place for two advertised public hearings on the ordinance.

Regarding the advertised public hearings, the bill requires one to be held on a weekday after 5:00 p.m., unless a majority, plus one vote, chooses to meet at another time. The first hearing must be held at least 7 days after the date the first advertisement is published. The second hearing must be held at least 10 days after the first hearing and shall be advertised at least 5 days prior to the hearing. The bill sets out the criteria for the form of the advertisement.

The act is effective upon becoming a law and retroactive to June 11, 1999, which was the effective date of chapter 99-319, Laws of Florida.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. A new paragraph (d) is added to subsection (3) of s. 166.041, F.S.; to specify procedures for ordinances sought by a municipality to change rates, charges or fees of any municipal water or sewer utility, and to include the following requirements:

1. Each municipality must maintain a master list of persons who request in writing that they receive a copy of all notices; list is available to the public; clerk of governing body must contact by mail all persons who have requested notice, all customers of the municipal utility, and all affected real property owners, as obtained through ad valorem tax records; notice must contain specified language; thirty day notice required prior to hearing.

2. Additionally provide advertisement of hearing in the following manner: two advertised hearings; after second hearing, may adopt ordinance; specific times and days for hearings; advertisements have certain size restrictions and must be placed in a newspaper of general circulation; must appear in certain format.

Section 2. Section 367.0816, F.S., is amended to provide that if the PSC determines that a public utility earned a rate of return at or above the bottom of the range of its current authorized rate of return, for the 12-month period ending with the conclusion of the recovery period, the utility's rate must be reduced by the amount of the rate case expense, which was allowed to be collected over a four-year amortized recovery period. The rate case expense must not be included when making this determination. The section provides that rate reductions must occur at the end of the recovery period. If rates are collected after the recovery period, and are in excess of the recovery amount, refunds by the reduced amount must be made to the utility's customers. The section clarifies that if reductions are not made by the utility, the PSC must make a separate determination of the utility's rate case expense, at the conclusion of the recovery period. If the utility for the 12-month period ending with the conclusion of the recovery period, is at or above the bottom of the utility's authorized range of return, the PSC must reduce the utility's rate and require refunds to customers by the reduced amount.

Section 3. Subsection (8) of s. 367.171, F.S., is amended to provide that county rate proceedings are subject to the provisions of ss. 120.569 and 120.57, F.S., which provide hearing procedures under the Administrative Procedures Act.

Section 4. An effective date of upon becoming a law is provided, and the act is to apply retroactively to June 11, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There is no impact on state government revenues.

2. Expenditures:

Section 3 of the bill provides that county rate proceedings are subject to the provisions of ss. 120.569 and 120.57, F.S., which provide hearing procedures under the Administrative Procedures Act. The effect on the workload of the Division of Administrative Hearings is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There is no impact on local government revenues.

2. Expenditures:

Municipalities may incur additional costs associated with the noticing and public hearing requirements of the bill. County governments that regulate public utilities may incur additional costs resulting from administrative challenges under the provisions of the Administrative Procedures Act.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PSC prepared an analysis using data from rate cases completed over the last few years for Class A and B utilities. The utilities reviewed included the Ferncrest Utilities' 1995 rate case; the Betmar Utilities, Inc.'s 1995 rate case; the Rotonda West Utility Corp.'s 1996 rate case; the Hobe Sound Water Company's 1996 rate case; the Florida Cities Water Co.'s 1996 rate case; the Rainbow Springs Utilities' 1996 rate case; the United Water Florida, Inc.'s 1997 rate case; the Florida Cities Water Co.'s 1997 rate case; the Betmar Utilities' 1997 rate case; and the United Water Florida, Inc.'s 1999 rate case. The total rate case expense in the completed cases ranged from a low of \$17,605 for the Betmar Utilities' 1997 completed case, to a high of \$555,057 for the United Water Florida's (UWF) 1997 completed case. Rate case expense exceeded \$500,000 for two of the cases listed, and seven of the ten utilities listed incurred rate case expenses under \$120,000.

The UWF's 1997 rate case expense added \$0.01, per 1,000 gallons, to the water charge and \$0.01, per 1,000 gallons, to the wastewater charge, and \$0.08 and \$0.15, respectively, to the base facility charge (BFC). There are two parts to a rate. One part is called a base facility charge or BFC. The BFC is a fixed charge paid by a customer to cover a utility's fixed expenses. The other part is a gallonage charge which is based on variable expenses (i.e. chemicals, power).

Assuming UWF's residential customers use 6,000 gallons per month, the amount of their monthly water and wastewater bill going towards rate case expense recovery would be \$0.14 and \$0.21, respectively. At the end of four years, the average customer's bill would be reduced by \$0.35 ($\$0.14 + \$0.21 = \0.35). Using the same usage assumption for customers of Betmar Utilities, Inc., the amount of their monthly water and wastewater bill going towards rate case expense recovery would be \$0.70 and \$1.36, respectively. At the end of four years, the average customer's bill would be reduced by \$2.06.

The PSC conducted a separate analysis of the Florida Water Services' (FWS) 1996 rate case expense because the rate structure approved was complicated. The rate case expense in this case exceeded \$1.3 million.

In the FWS rate case, the PSC approved eight rate bands for water and six rate bands for wastewater. A rate band is a group of systems or multi-systems with similar costs. This approach establishes a representative rate for these similar cost utilities. For the highest rate band, the rate case expense added \$0.03 to the gallonage charge and \$0.13 to the BFC for water, and for wastewater, the expense added was \$0.03 to the gallonage charge and \$0.12 to the BFC. The resulting impact on a customer's average monthly bill for the highest rate band, assuming usage of 6,000 gallons, is \$0.31 for water and \$0.30 for wastewater. The resulting impact on a customer's average monthly bill for the lowest rate band, assuming usage of 6,000 gallons, is \$0.10 for water and \$0.11 for wastewater.

Florida Water Services and United Water Florida are the two largest investor owned water and wastewater utilities operating in Florida.

The PSC also performed an analysis on 37 rate cases for the Class C utilities. These utilities comprise the majority of investor owned utilities under PSC jurisdiction. These smaller utilities typically file for staff assisted rate cases (SARC). Staff assisted rate cases are prepared by the PSC staff on behalf of the utility. According to the PSC, it processes far more SARCs for Class C utilities than rate cases for the larger Class A and B utilities. Rate cases for large, multi-system utilities are costly to file and more costly to litigate, if driven by protesting parties into a formal hearing process. The rate case expense for SARCs average \$625.00 for water and \$610.00 for wastewater and result in an increase of a monthly bill that averages \$0.11 for water and \$0.07 for wastewater.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

As noted in the "Fiscal Analysis," municipalities and counties may incur additional costs associated with the provisions of this bill. It is not known if these costs will be significant.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

In the absence of an explicit legislative expression, substantive legislation is to be applied prospectively, not retrospectively. In addition, provisions of a statute will not be given retroactive effect if the statute interferes with a vested right. *Young v. Altenhaus*, 472 So. 2d 1152 (Fla. 1985); *State Farm Mut. Auto. Ins. Co. v. Hassen*, 650 So. 2d 128 (Fla. 2d DCA 1995). Procedural or remedial statutes are to be applied retrospectively and are applied to pending cases. *Alamo Rent-a-Car, Inc. v. Mancusi*, 632 So. 2d 1352 (Fla. 1994); *City of Lakeland v. Catinella*, 129 So. 2d 133 (Fla. 1961). Substantive law prescribes duties and rights and procedural law provides the means and methods to apply and enforce those duties. *Alamo; Benyard v. Wainwright*, 322 So. 2d 473 (Fla. 1975).

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Committee on Community Affairs

On April 12, 2000, the Committee on Community Affairs adopted one amendment to CS/HB 329 that is traveling with the bill. The amendment replaces the requirements placed on municipalities that promulgate ordinances to change rates, charges, or fees of municipal water or sewer utilities with a required notice of a proposed increase to each customer through the utility's billing process. The notice must contain the date, time and place of the meeting. General law provides additional, controlling authority regarding notice. The amendment also deletes the changes made in the treatment of rate case expenses. The effective date is changed to upon becoming a law.

Committee on Utilities and Communications

On March 14, 2000, the Committee on Utilities and Communications unanimously voted to incorporate amendments 1, 2, and 3 into the bill, and make the bill a committee substitute. The committee substitute provides that a utility's rate be reduced by the amount of the rate case expense under certain circumstances, and when applicable, provide customer refunds. In specific cases, the PSC may reduce the utility's rate and require customer refunds. The committee substitute further requires that county rate proceedings follow certain provisions of the Administrative Procedures Act. The committee substitute also adds noticing requirements for municipalities that propose to change their water or sewer rates, charges, or fees.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Staff Director:

Wendy G. Holt

Patrick L. "Booter" Imhof

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby

Joan Highsmith-Smith