

**STORAGE NAME:** h0329s1.uco

**DATE:** March 29, 2000

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

**BILL #:** CS/HB 329

**RELATING TO:** Public Utility Rate Case Expenses

**SPONSOR(S):** Committee on Utilities and Communications and  
Representatives Fiorentino and Fasano

**TIED BILL(S):**

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

- (1) UTILITIES AND COMMUNICATIONS YEAS 10 NAYS 0
  - (2)
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

Current law provides any local county government with the option to provide economic regulation of the privately owned water and wastewater utilities operating in its county, or to cede regulatory jurisdiction over to the Public Service Commission (PSC).

Current law also provides that the amount of utility rate case expense allowed by the PSC could 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 of utilities to reduce their rates as expenses were recovered was stricken in 1999 by s. 6 of chapter 99-319, Laws of Florida.

The bill provides that under certain circumstances that a public utility's rate shall be reduced by the amount of its rate case expense.

The bill further 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 would require that county rate proceedings follow certain provisions of the administrative procedure act.

The bill 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 local or state government.

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

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:

Under s. 367.171, Florida Statutes, 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 Public Service Commission (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.

There are three classes of utilities. Class A utilities are those having annual water or wastewater operating revenues of \$1,000,000 or more. Class B utilities are those having annual water or wastewater operating revenues of \$200,000 or more but less than \$1,000,000. Class C utilities are those having annual water or wastewater or operating revenues of under \$150,000.

Section 367.0816, Florida Statutes, 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.

C. EFFECT OF PROPOSED CHANGES:

The bill amends s. 367.0816, Florida Statutes, 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 shall 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 shall not be included.

The bill further 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, refunds by the reduced amount shall 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 shall make a separate determination of the utility's rate case expense, at the

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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 to customers by the reduced amount.

The bill adds that county rate proceedings follow the provisions of s. 120.569, Florida Statutes, and s. 120.57, Florida Statutes, which provide hearing procedures under the Administrative Procedure Act.

The bill further states that for utility service providing municipalities, the governing body for such municipality shall 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.

The bill stipulates for the advertised public hearings, one shall 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 shall be held at least 7 days after the date the first advertisement is published. The second hearing shall 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:**

Please see "Effect of Proposed Changes" section.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

There is no impact on state government revenues.

2. Expenditures:

There is no impact on state government expenditures.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

There is no impact on local government revenues.

2. Expenditures:

There is no impact on local government expenditures.

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 the 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

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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:**

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

**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

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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 Procedure 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:

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Wendy G. Holt

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Patrick L. "Booter" Imhof