

STORAGE NAME: h0365a.uco

DATE: April 4, 2000

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

BILL #: HB 365

RELATING TO: Excess Utility Payment/Refund/PSC

SPONSOR(S): Representatives Argenziano and Fasano

TIED BILL(S):

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

- (1) UTILITIES AND COMMUNICATIONS YEAS 9 NAYS 1
 - (2) FINANCE AND TAXATION
 - (3) TRANSPORTATION AND ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

As the result of a Public Service Commission Order that was overturned by the First District Court of Appeal, 89,542 customers overpaid Southern States Utilities, Inc., now known as Florida Water Services Corporation (FWSC), for water and wastewater services during the period between September 15, 1993 and January 23, 1996. Based on calculations of the Public Service Commission (PSC), these customers overpaid, including accrued interest through July 1, 2001, \$14,160,902.

The bill provides refunds for eligible utility customers from the Public Service Regulatory Trust Fund. The bill further requires the PSC to notify eligible utility customers of the application for refund process and the total amount, including interest, of their refund. The PSC is also required to verify applicants' eligibility and request the Comptroller to issue refund warrants.

The bill would require the appropriation of \$14,160,902 for refunds plus postage fees of \$59,085, from the Public Service Regulatory Trust Fund. According to the PSC, an indeterminable amount of additional costs will further be incurred, by the commission and the Office of the Comptroller, in preparing the notices to customers and processing the requests for refund.

The changes in the bill concerning the refund provisions take effect upon becoming law.

Paragraph (n) of subsection (4) of section 215.20, Florida Statutes, is repealed. The change exempts the Florida Public Service Regulatory Trust Fund from having deposited 7% of all its income of a revenue nature into the General Revenue Fund.

The bill further provides that the Florida Public Service Regulatory Trust Fund is also exempt from having deposited a .03% service charge of all its income of a revenue nature into the General Revenue Fund.

The bill adds paragraph (v) to subsection (1) of s. 215.22, Florida Statutes, and deletes language from s. 350.113, Florida Statutes, to conform to the change made in ch. 215, Florida Statutes.

The bill provides that except as otherwise provided this act shall take effect July 1, 2000.

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:

On May 11, 1992, Southern States Utilities, now known as Florida Water Services Corporation, (FWSC), filed an application to increase the rates and charges for 127 of its water and wastewater service areas regulated by the PSC, Docket No. 920199-WS. The PSC approved an increase in the utility's final rates and charges through Order No. PSC-93-0423 which was issued on March 22, 1993. The rates were based on a uniform rate structure.

A uniform water rate structure, or single tariff pricing method, aggregates the costs and investments of a utility across all water facilities and customers to compute an average water rate. A uniform wastewater rate is computed in the same manner.

Notices of appeal of Order No. PSC-03-0423 were filed with the First District Court of Appeal, (1st DCA), by Citrus County, Sugarmill Woods, Public Counsel, and others. The utility then filed a Motion to Vacate Automatic Stay, which was in effect as a result of the appeal. A PSC order was issued on December 14, 1993 granting the utility's motion, Order No. PSC-93-1788-FOF-WS.

On April 6, 1995, the PSC's decision in Order No. PSC-93-0423 was reversed in part and affirmed in part by the 1st DCA. Citrus County v. Southern States Utilities, Inc., 656 So.2d 1307 (Fla 1st DCA 1995). The Court stated that: "We conclude that chapter 367 does not give the PSC authority to set uniform statewide rates that cover a number of utility systems related only in their fiscal functions by reason of common ownership." In other words, these systems were operationally unrelated in their delivery of utility service. The 1st DCA issued a mandate on July 13, 1995. The FWSC sought discretionary review by the Florida Supreme Court. The PSC filed a Notice of Joinder and Adoption of FWSC's Brief. The Supreme Court denied review on of October 27, 1995, Southern States Utilities, Inc. v. Citrus County, 656 So.2d 651 (Fla. 1995).

An Order Complying with Mandate, Requiring Refund, and Disposing of Joint Petition (decision on remand) was issued by the PSC on October 19, 1995, Order No. PSC-95-1292-FOF-WS. By that order, FWSC was ordered to implement a modified stand alone rate structure. These rates were based on a water benchmark of \$52.00 and a wastewater benchmark of \$65.00. The PSC reviewed the evidence already taken, including that taken on functional relatedness, and chose not to reopen the docket to take additional evidence

on the relatedness issue. The PSC determined that the evidence already presented in the docket supported the implementation of a modified stand alone rate structure.

There are varying forms of a modified stand alone rate structure. A stand alone rate structure involves setting rates for each individual system, with modification caps and subsidies as parts of the rate.

The implementation of the modified stand alone rate structure resulted in a rate decrease for some customers and a rate increase for other customers. For those customers who had overpaid for service, the PSC instructed FWSC to make refunds with interest to these customers within 90 days of the issuance of the PSC's order. For those customers who had underpaid for service, the PSC based its decision on its interpretation of case law related to retroactive rate making. The PSC decided that FWSC could not retroactively collect the difference in rates from those customers who would be unable to adjust their past consumptive practices for the period the rates were in place.

On February 29, 1996, the Supreme Court of Florida issued its opinion in GTE Florida, Inc. v. Clark, 668 So.2d 972 (Fla. 1996). The court mandated that GTE be allowed to recover disallowed expenses through the use of a surcharge. In the court's opinion, it stated that imposition of a surcharge to recover the previously disallowed expenses would not constitute retroactive rate making. Further, the court stated that it views:

utility rate making as a matter of fairness. Equity requires that both ratepayers and utilities be treated in a similar manner.

Id.

Subsequently, the PSC voted to reconsider its entire remand decision in light of the GTE decision. Upon reconsideration, the PSC affirmed its prior decision, inter alia, of requiring FWSC to issue refunds with interest to customers who had overpaid for services and denying imposition of surcharges to customers who had underpaid for services. The FWSC filed an appeal to the PSC's decision, Southern States Utilities, Inc. v. Florida Public Service Commission, 704 So.2d 555 (Fla 1st DCA 1997), and the DCA reversed and remanded the PSC decision for reconsideration. The court stated that the PSC erred in relying on the reasons enumerated in its order for finding GTE inapplicable. The court further stated that the PSC violated the directive of treating the ratepayers and the utility in a similar manner by ordering FWSC to provide refunds to customers who overpaid under the erroneous uniform rates without allowing FWSC to surcharge customers who underpaid under those same rates.

By Order No. PSC-97-1290-PCO-WS issued October 17, 1997, the PSC required FWSC to provide notice by October 22, 1997 to all affected customers of the Southern States decision and its potential impact.

The PSC, by Order No. PSC-97-1078-PCO-WS, directed FWSC to provide a refund/surcharge report. The report was to provide an exact calculation by service area of the potential refund and surcharge amounts with and without interest as of June 30, 1997. The calculation covers the period from September 15, 1993, when uniform rates were first implemented, to January 23, 1996, when modified stand alone rates were implemented for all affected service areas. In its refund/surcharge report, FWSC reported the then potential refunds of \$11,059,486 and potential surcharges of \$11,776,926. These amounts exclude Spring Hill which was calculated separately at \$2,485,248. The difference in the amounts

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are the result of the differences in customer base, consumption and the final rate structure. Therefore, the refund amount is not equal to the surcharge amount.

On January 26, 1998, Order No. PSC-98-0143 was issued. It was ordered by the PSC, inter alia, that FWSC will not make refunds or impose surcharges upon any of the affected customers. Several appeals of this order are pending with the First District Court of Appeal.

According to the PSC, on June 10, 1998, the 1st DCA issued an opinion in another case which expressly overrules its Citrus County opinion. Southern States Utilities v. Florida Public Service Commission, 714 So.2d 1046 (Fla. 1st DCA 1998). In overruling its prior decision, the Court found that a utility owning multiple systems does not have to prove that the systems are functionally related in order for the PSC to set uniform rates applicable to some or all of the systems. Id. at 1051. As a result of this opinion, the parties opposing uniform rates who have appealed the PSC no refund/no surcharge decision, have now requested the Court to also consider the merits of their other arguments regarding uniform rates which the Court never reach in its prior decision. Accordingly, in light of the Court's reversal of its Citrus County opinion and the posture of Docket No. 920199-WS on appeal, questions have been raised regarding the legal basis for refunds in this case.

C. EFFECT OF PROPOSED CHANGES:

The bill refunds FWSC customers who overpaid for water and wastewater services during the period between September 15, 1993 and January 23, 1996. The bill requires the PSC to notify eligible utility customers of the application for refund process and the total amount, including interest, of their refund. The PSC is also required to verify applicants' eligibility and request the Comptroller to issue refund warrants.

The changes in the bill concerning the refund provisions take effect upon becoming law.

Paragraph (n) of subsection (4) of section 215.20, Florida Statutes, is repealed.

This change provides that the Florida Public Service Regulatory Trust Fund is also exempt from having deposited a 0.3% service charge of all its income of a revenue nature into the General Revenue Fund.

The bill adds paragraph (v) to subsection (1) of s. 215.22, Florida Statutes, to provide that the Florida Public Service Regulatory Trust Fund is exempt from having deposited 7% of all its income of a revenue nature into the General Revenue Fund.

The bill deletes language from s. 350.113, Florida Statutes, to conform to the change made in ch. 215, Florida Statutes.

Finally, s. 367.145(3), Florida Statutes, is amended to allow regulatory assessment fees collected pursuant to Chapter 364 and 366 to be used to cover routine cash flow requirements for water and wastewater regulations.

The bill provides that except as otherwise provided this act shall take effect July 1, 2000.

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:

The bill would require the appropriation of \$14,160,902 for refunds and \$59,085 for postage fees from the Public Service Regulatory Trust Fund. Please see Fiscal Comments for additional information.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to the PSC, there is insufficient funds in the trust fund to support the provisions of HB 365. Information compiled by the PSC indicates that the cost are \$14,160,902 in refunds to customers, \$59,085 in postage cost, and an indeterminate amount in additional costs in preparing the notices to customers and processing the requests for refund. The sum of the two known costs is \$14,219,987.

For funding purposes, the PSC has prepared projected balances of the Regulatory Trust Fund under current law and current law with the proposed amendments to chapters 215, 350, and 367.

The unencumbered projected balance for the Regulatory Trust Fund on June 30, 2001 is \$14,919,743. After disbursements and other contingencies, and no changes to current law, the estimated balance available on July 1, 2001 would be \$4,664,999.

With the proposed amendment to chapters 215, 350, and 367, the estimated balance available July 1, 2001 would be \$10,195,060.

Section 367.145(3), Florida Statutes, provides that the fees collected by the PSC pursuant to this section may only be used to cover the cost of regulating water and wastewater systems. Fees collected by the PSC pursuant to chapters 364 and 366 may not be used to pay the cost of regulating water and wastewater systems. The regulatory assessment fees collected pursuant to chapters 364 and 366 are collected from the electric, gas, and communications industries. The wastewater fees are collected once per year, being due on March 31. There has to be a sufficient balance of water and wastewater fees on hand at July 1 of any year to cover the regulatory costs applicable to that industry from July 1 through the following March 31. Regulatory costs for the gas, electric, and communications are collected twice a year, except for communications company with revenue of \$10,000 or less those fees are collected once a year.

Section 215.20(1), F.S., provides in part that: "A service charge of 7 percent, representing the estimated pro rata share of the cost of general government paid from the General Revenue Fund, shall be deducted from all income of a revenue nature deposited in all trust funds except those enumerated in s. 215.22."

Section 215.20(3), F.S., provides in part that: "A service charge of 0.3 percent shall be deducted from income of a revenue nature deposited in the trust funds enumerated in subsection (4). . . All such deductions shall be deposited in the General Revenue Fund."

Section 215.20(4), F.S., provides in part that: "The income of a revenue nature deposited in the following described trust funds, by whatever name designated, is that from which the deductions authorized by subsection (3) shall be made: . . . (n) The Florida Public Service Regulatory Trust Fund established pursuant to s. 350.113."

Section 215.22(1), F.S., provides that certain trust funds are exempt from the deduction required by s. 215.20(1), F.S.

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 expenditures 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.

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V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Staff Director:

Wendy G. Holt

Patrick L. "Booter" Imhof