

STORAGE NAME: h4785z.uco  
DATE: June 2, 1998

**\*\*FINAL ACTION\*\***  
**\*\*SEE FINAL ACTION STATUS SECTION\*\***

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
UTILITIES AND COMMUNICATIONS  
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** HB 4785

**RELATING TO:** Telecommunications

**SPONSOR(S):** Utilities and Communications and Rep. Arnall

**COMPANION BILL(S):**

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

- (1) UTILITIES AND COMMUNICATIONS YEAS 11 NAYS 5
- (2) TRANSPORTATION & ECONOMIC DEV. APPROPRIATIONS YEAS 12 NAYS 0
- (3)
- (4)
- (5)

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**I. FINAL ACTION STATUS:**

HB 4785 was substituted by the Senate in lieu of CS/SB 640 and passed. Chapter Law 98-277.

**II. SUMMARY:**

The bill:

- \* For purposes of universal service, requires the Public Service Commission (PSC) to determine the cost of providing basic local service and service to Lifeline customers according to specified criteria and to report on the same to the Legislature by February 15, 1999.
- \* Requires the PSC to evaluate local rate subsidies, determine the fair and reasonable rate for local service according to specified criteria and report on the same to the Legislature by February 15, 1999.
- \* Provides for a transition rate for those leaving Lifeline service.
- \* Extends caps and reduces intrastate switched access charges for Sprint and GTE by 15 %; requires long distance providers to flow benefits through to customers.
- \* Requires the PSC to study and report to the Legislature by February 15, 1999, on policy matters associated with telecommunications service offered in multi-tenant environments.
- \* Corrects numerous "glitches" remaining from 1995, rewrite of chapter 364, Florida Statutes.
- \* Expands a consumer information program; creates the Telecommunications Consumer Protection Act addressing telecommunications billing practices and carrier change policies.
- \* Extends basic and nonbasic price caps from January 1, 1999 to January 1, 2000.
- \* Requires local exchange companies to provide services for resale and support of such service on a timely basis. The PSC is to monitor complaints on this subject and to include results in its annual competition report.
- \* Except as otherwise provided, the bill is to take effect upon becoming a law.
- \* Appropriates \$1,200,000 to the Public Service Commission from the Public Service Commission Regulatory Trust Fund.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**UNIVERSAL SERVICE, INTRASTATE SWITCHED ACCESS CHARGES, AND RATES FOR BASIC LOCAL TELECOMMUNICATIONS SERVICE**

With the removal of statutory prohibitions against competition in the local market the nature, extent, and continuation of historic implicit subsidy mechanisms supporting universal service has come into question.

*"Network access service"* is a service provided by local exchange companies to connect interexchange (long distance) carriers to their customers by use of the local telecommunications network. An access service is used in both originating and terminating long distance calls. See section 364.163, Florida Statutes.

It is generally agreed among industry analysts that charges for intrastate network access services (intrastate switched access charges) are priced far in excess of cost and, in many cases, substantially higher than comparable charges applicable to interstate calls (interstate switched access charges). The October 1, 1998 **intrastate** switched access rates for major local exchange companies are as follows: BellSouth -- \$.0492/min.; GTE-FL-- \$.1148/min.; Sprint-FL -- \$.1197/min.

*"Universal service"* is an "evolving level of access to telecommunications services . . . provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high cost areas." Section 364.025(1), Florida Statutes. See also, 47 U.S.C. 254, which sets forth federal universal service principles.

Regulators traditionally have used revenues from the high intrastate switched access rates (and high rates for other services) to implicitly subsidize universal service and maintain basic residential local telecommunications rates at levels believed by many to be below the cost to provide local service. The implicit subsidy mechanism was left in place when chapter 364, Florida Statutes, was revised in 1995 to open Florida's local telecommunications markets to competition. However, the pricing structure resulting from this historic regulatory policy appears to be a barrier to market entry for telecommunications providers wishing to compete in local residential markets. As such, the policy may have contributed to the stalled development of local competition despite the gradual reductions in intrastate switched access charges required by section 364.163(6), Florida Statutes (1995).

The possibility that implicit subsidy mechanisms might disrupt the development of competitive markets is well understood; in its Report and Order, adopted on May 7, 1997, and released on May 8, 1997, in CC Docket No. 96-45 (Universal Service Order), the Federal Communications Commission (FCC) stated: "We believe that, as competition develops, states may be compelled by marketplace forces to convert implicit support to explicit, sustainable mechanisms consistent with section 254(f)." *Id.* at paragraph 202.

The Federal Telecommunications Act provides the following at 47 U.S.C. 254(f):

A State may adopt regulations not inconsistent with [FCC] rules to preserve and advance universal service. Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the State to the preservation and advancement of universal service in that State. A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden federal universal service support mechanisms.

As Florida begins to address the issue of explicit, competitively neutral universal service funding and the possible competitive impact of historic price anomalies, accurate information concerning rates, costs, and the nature and extent of any existing implicit subsidies will be needed. Potential changes in the current subsidy system must also be evaluated in terms of impact on customers.

*Need based subsidy*

One aspect of universal service is providing local telecommunications service to low income customers. *Lifeline service* is a need-based assistance program aimed at promoting universal service by maintaining highly subsidized rates for targeted low income telephone customers. A portion of these reduced rates is simply "absorbed" by the local exchange companies and recouped implicitly through higher rates charged for other services. Due to efforts by the PSC it is expected that Lifeline subscribership will increase; the potential impact of such efforts needs to be quantified.

Consumer qualification for Lifeline is set forth at 47 C.F.R. 54.409, which provides the following:

- (a) To qualify to receive Lifeline service in states that provide state Lifeline service support, a consumer must meet the criteria established by the state commission. The state commission shall establish narrowly targeted qualification criteria that are based solely on income or factors directly related to income.
- (b) To qualify to receive Lifeline support in states that do not provide state Lifeline support, a consumer must participate in one of the following programs: Medicaid; food stamps; Supplemental Security Income; federal public housing assistance; or Low-Income Home Energy Assistance Program. In states not providing Lifeline support, each carrier offering Lifeline service to a consumer must obtain that consumer's signature on a document certifying under penalty of perjury that the consumer receives benefits from one of the programs mentioned in this paragraph and identifying the program or programs from which that consumer receives benefits. On the same document, a qualifying low-income consumer also must agree to notify the carrier if that consumer ceases to participate in the program or programs.

The PSC has adopted a Lifeline program qualification standard that includes participants in "Programs funded under Temporary Aid for Needy Families" (TANF) in

addition to the programs described under federal standard at subsection (b) (immediately above). This distinction is the result of the PSC adopting qualification standards before the federal government adopted its standards.

*Establishing Cost as an Element of Quantifying Implicit Residential Rate Subsidies*

The cost of local residential service is a contentious subject to be addressed as an aspect of determining the amount of any implicit subsidies present in the current rate structure.

There are two approaches to calculating costs of local service. One is by using computer software models to establish such costs according to specified data inputs. The other is to rely on the local exchange companies' regulatory books to establish each company's "actual" or "embedded" costs. With either approach, assumptions about cost allocations and other variables will impact the eventual cost of service determination.

To determine implicit subsidy levels costs will be measured against each local exchange company's price of basic residential local service. Currently, the statewide averaged price of basic local residential service is \$10.16 plus a subscriber line charge of \$3.50 for a total of \$13.66 per month.

**ACCESS TO TENANTS**

As a general proposition, landlords must provide some form of access to the telecommunications network in order to attract and keep tenants. Prior to the advent of local telecommunications competition this simply meant allowing the incumbent local exchange company to have access to tenants.

With the advent of multiple providers in the local telecommunications market, new entrants in that market report that building owners are attempting to charge competitive providers a fee for the right to access tenants. It is reported that landlords typically do not extract similar charges from incumbent providers. For this reason, competitive providers may be placed at a substantial disadvantage in terms of reaching customers in rental settings.

The right of a company to access a tenant by occupying the landlord's property has constitutional implications under article X, section 6 (a) of the Florida Constitution which provides in part that "No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner" and similar provisions of the United States Constitution. See *Storer Cable T.V. of Florida, Inc. v. Summerwinds Apartments Associates, Ltd.* 493 So.2d 417 (Fla. 1986).

**"GLITCHES" REMAINING FROM THE 1995 REWRITE OF CHAPTER 364**

In 1996, the PSC identified several minor and noncontroversial statutory "glitches" resulting from the 1995 rewrite of chapter 364, Florida Statutes. The consensus among the PSC and industry representatives is that as long as chapter 364, Florida Statutes, is being "opened" this session, the minor corrections recommended by the PSC should be

made. The "glitch" section also includes minor corrections to statutory cross-references resulting from the changes anticipated by the bill.

## **CONSUMER PROTECTION**

With the advent of competition, according to the PSC and news reports, there have been abuses of billing and carrier change processes. These abuses have become so prevalent that they have been given popular culture names: the unauthorized change of a carrier is known as "slamming;" charges for unauthorized or unordered services appearing on a customer's bill is known as "cramming." The PSC has several ongoing proceedings addressing related consumer billing issues. The Telecommunications Workers of America, AFL-CIO has reported that telephone operators are receiving a large volume of calls from customers who have been unable to obtain adequate information regarding charges appearing on customer bills.

## **LOCAL EXCHANGE COMPANY PRICE CAPS**

Section 364.051, Florida Statutes, price caps for basic local service and specified nonbasic services will lapse on July 1, 1999.

## **RESALE OF LOCAL EXCHANGE COMPANY SERVICES**

It has been reported by Taylor and Company, a Sarasota-based telecommunications consulting firm, that local exchange companies are not adequately supporting the services that they provide for competitive resale. Related issues have been raised in the BellSouth, "Section 271" proceeding at the Public Service Commission.

### **B. EFFECT OF PROPOSED CHANGES:**

*Please see section-by-section review of substantive provisions of the bill.*

### **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?**

Yes. The PSC is granted additional rulemaking authority.

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

Yes. The PSC is given additional responsibilities.

- (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?

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:

- (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?

N/A.

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 166.231; 203.01; 364.02; 364.025; 364.051; 364.161; 364.163; 364.336; 364.337; 364.339; 364.601; 364.602; 364.603; 364.604, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

#### **PUBLIC SERVICE COMMISSION UNIVERSAL SERVICE COST REVIEW**

Section 1 amends section 364.025, Florida Statutes, to strike dated language and to require the Public service Commission (PSC) to determine the cost of providing basic local telecommunications service according to specified criteria, as well as the cost of serving low income ("Lifeline") customers. Such determinations are to be reported to the President of the Senate and the Speaker of the House by February 15, 1999.

#### **PUBLIC SERVICE COMMISSION STUDY OF RATES, COSTS AND SUBSIDIES**

Section 2 requires the PSC to review rates, costs, and subsidies as follows:

(1) The Legislature determines that intrastate switched access rates *may* be providing implicit subsidies of basic local telecommunications service rates in Florida. The PSC is directed to study the relationships among costs and charges associated with providing

basic local service, intrastate access and other services provided by local exchange companies. The results of this study are to be reported to the President of the Senate and the Speaker of the House by February 15, 1999.

(2)(a) By February 15, 1999, the PSC is to report to the President of the Senate and the Speaker of the House its conclusions as to the fair and reasonable rate for basic residential local service considering affordability, the value of the service, comparable rates in other states, and the cost of providing the service --including the proportionate share of joint and common costs. The PSC is to hold numerous public hearings throughout the state.

(b) Local exchange companies are required to provide needed cost information to the PSC by August 1, 1998. The PSC and intervenors are to have access to records supporting cost data.

### **LIFELINE TRANSITION RATE**

Section 3 creates a transition rate for those leaving Lifeline service; this rate is to be 70% of the residential rate and is to be available for one year after a person leaves Lifeline. The offering of a transition rate does not preclude a local exchange company from offering other discounted services that are consistent with specified statutes.

### **IMMEDIATE SWITCHED ACCESS CHARGE REDUCTIONS AND FLOW-THROUGH**

Section 4 amends sections 364.163 (1) and (6), Florida Statutes, to provide that, effective January 1, 1999, rates for switched network access services are capped until January 1, 2001. GTE and Sprint must reduce switched access charges by 5% on July 1, 1998, and by 10% on October 1, 1998. The existing annual 5% reduction is eliminated.

Any long distance carrier which benefits from these reductions is to decrease intrastate long distance rates in an amount that returns the benefits of the reduction to the long distance carrier's customers. However, long distance carriers are prohibited from reducing per minute intraLATA toll rates by a percentage greater than the per minute switched access rate reductions required by the bill.

### **ACCESS TO TENANTS**

Section 5 requires the PSC to undertake a study of issues associated with telecommunications companies providing service in multi-tenant environments and to report the results of the study and policy recommendations to the Legislature by February 15, 1999. Publicly noticed workshops are required. The PSC is to consider promotion of competition, consistency with applicable federal requirements, landlord property rights, rights of tenants, and other considerations developed through the workshop process and commission research.

### **CONSUMER PROTECTION (Sections 6-7)**

Section 6 requires the PSC to expand its existing consumer information program and to assist consumers in resolving billing disputes with telecommunications companies. The PSC is authorized to specify by rule information to be provided by companies to customers and also the manner of distribution of such information.

Section 7 creates part III of chapter 364, Florida Statutes, consisting of new sections 364.601, 364.602, 364.603, and 364.604, Florida Statutes.

Creates section 364.601, Florida Statutes, which provides that part III of chapter 364, Florida Statutes, may be cited as the "Telecommunications Consumer Protection Act.

Creates section 364.602, Florida Statutes, which defines the following for purposes of Part III: (1) "billing party" (2) "commission" (3) "customer" (4) "originating party" and (5) "information service."

Creates section 364.603, Florida Statutes, which requires the PSC to adopt rules to prevent "slamming" according to specified criteria.

Section 364.604, Florida Statutes, is created to address billing practices as follows:

(1) Provides standards for items that must be included on a bill and requires that responses to consumer inquiries must be initiated within 24 hours. Telecommunications carriers are given until June 30, 1999 to comply with this section.

(2) Provides that customers are not liable for any charges for telecommunications service which the customer did not order or which were not provided to the customer.

(3) Provides that every billing party is to offer free blocking for 900 or 976 calls.

(4) Provides that a customer's Lifeline local service may not be disconnected provided the charges, taxes, and fees applicable to basic local service are paid.

(5) The PSC is authorized to adopt rules to implement this section.

### **CURRENT PRICE CAPS EXTENDED**

Section 8 amends section 364.051, Florida Statutes, to extend price caps for basic, and specified nonbasic, telecommunications services from January 1, 1999, until January 1, 2000.

### **LOCAL EXCHANGE COMPANY SERVICES FOR COMPETITIVE RESALE**

Section 9 amends section 364.161 to require local exchange telecommunications companies to provide specified services in a timely manner and for the PSC to monitor alternative local exchange company complaints against local exchange companies regarding such services and to report the results to the Legislature in the annual report on competition.

**“GLITCHES” FROM 1995 REWRITE OF CHAPTER 364 (Sections 10-15)**

Sections 10 & 11 amend, with identical language, section 166.231(9)(d)3., Florida Statutes, and section 203.01(9)(c), Florida Statutes. Both sections currently require the PSC to publish statewide average tariff rates annually. A literal reading of the existing language would require the PSC to publish average rates for all tariffs on file at the commission. The revisions will add the words "for commonly used services." This will clarify that the PSC is to publish statewide tariff rates for only the rates that are likely to be provided by an alternative local exchange company (ALEC) on a bundled basis. If the PSC strictly construes the existing statutory language it will be required to publish the statewide average rates for hundreds of tariffs; pursuant to the revision the commission will be required to publish statewide averages for fewer than one hundred rates.

Section 12 amends section 364.02(12), Florida Statutes. Telecommunications companies must be certificated by the PSC. Under the current language of section 364.02(12), Florida Statutes, the definition of a "telecommunications company" does not extend to entities providing telecommunications facilities solely to a certificated telecommunications company (e.g., an electric company does not become a telecommunications company by providing fiber facilities to a local exchange company). The revision extends this "exemption" from the definition of a telecommunications company to entities that provide telecommunications facilities to those entities that are specifically excluded in section 364.02(12), Florida Statutes, from the definition of a telecommunications company (e.g., an electric company would not become a telecommunications company by providing fiber facilities to a cellular company). The same rationale that supports the existing "exemption" to PSC certification extends to the revision; namely, PSC certification is intended to protect end-user consumers and is generally unnecessary in the context of an arm's length offering of telecommunications facilities to members of the telecommunications industry.

Section 13 amends section 364.336, Florida Statutes, effective January 1, 1999, to clarify how regulatory assessment fees (RAFs) are to be computed. With the advent of competition, it is anticipated that telecommunications services will be provided over a "network of networks" with companies compensating one another for the use of network facilities and services that are necessary to complete calls. In recognition of the changed environment, companies are allowed to set-off such payments when calculating the basis for the commission's regulatory assessment fees.

Section 14 amends sections 364.337(2), (4), and (7) Florida Statutes, to make clear that alternative local exchange companies (ALECs) must provide "911" service at a level equivalent to that required of local exchange companies (LECs). The bill also deletes the interexchange telecommunications companies' (IXCs) exemption from the PSC authority to demand records of any telecommunications company pursuant to section 364.183(1), Florida Statutes. This revision ensures that the PSC has the authority to obtain necessary documents from an IXC during an investigation.

The changes in Section 13, above, establish how RAFs are to be computed for all telecommunications companies. Therefore, the language in section 364.337(7), Florida Statutes, addressing the computation of RAFs for IXCs and pay telephone providers is unnecessary and may create confusion. For this reason the language at section 364.337(7), Florida Statutes, is stricken.

Section 15 amends section 364.339, Florida Statutes, to prohibit the offering of shared tenant services (STS) from interfering with or precluding a residential tenant from obtaining direct access to the lines and services of competitive providers. Similar language previously applied to only commercial tenants. The revision is necessary because the rewrite of chapter 364, Florida Statutes, opened the residential STS market. Additionally, this section corrects a typographical error in section 364.339(3)(b), Florida Statutes, in which a reference to subsection (3) should be made, instead, to subsection (4). The words "serving local exchange" are deleted leaving simply the words "telecommunications company" in the statute. This broadens the language to reflect the evolving competitive environment.

**APPROPRIATION**

Section 16 provides that the sum of \$1,200,000 is appropriated to the Public Service Commission from the PSC Regulatory Trust Fund and eight positions are authorized for the purpose of carrying out the provisions of the act.

**EFFECTIVE DATE**

Section 17 provides that, except as otherwise provided, the act is to take effect upon becoming a law.

FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

F. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

<u>Expenditures</u>	<u>1998-99</u>	<u>1999-00</u>
Public Service Commission		
Public Ser. Reg. Trust Fund	\$625,485	

2. Recurring Effects:

<u>Revenues</u>	<u>1998-99</u>	<u>1999-00</u>
General Revenue Fund (RAF)	\$(391,500)	\$(409,000)
<u>Expenditures</u>	<u>1998-99</u>	<u>1999-00</u>
Public Service Commission		
Public Ser. Reg. Trust Fund	\$574,515	\$574,515

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

<u>Revenues</u>	<u>1998-99</u>	<u>1999-00</u>
General Revenue Fund	\$(391,500)	\$(409,000)

<u>Expenditures</u>	<u>\$1998-99</u>	<u>1999-00</u>
Public Service Commission		
Public Ser. Com. Reg. Trust Fund	\$1,200,000	\$574,515

G. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

H. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate.

2. Direct Private Sector Benefits:

Indeterminate.

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

Indeterminate.

I. FISCAL COMMENTS:

The Public Service Commission estimates that the reduction in revenues under section 13 of the bill would not have a significant effect on the commission's operations since the regulatory assessment fee rate currently being assessed is less than the cap set by section 364.336, Florida Statutes. The assessed rate could be adjusted if necessary.

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 or to take an 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:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

NA.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

Charles Murphy

Patrick L. "Booter" Imhof

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AS REVISED BY THE COMMITTEE ON TRANSPORTATION & ECONOMIC  
DEVELOPMENT APPROPRIATIONS:

Prepared by:

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Allen Joseph

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**FINAL RESEARCH PREPARED BY COMMITTEE ON UTILITIES AND  
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Prepared by:

Legislative Research Director:

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