

**STORAGE NAME:** h0155.uco

**DATE:** April 1, 1999

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

**BILL #:** HB 155

**RELATING TO:** Excess Utility Payments

**SPONSOR(S):** Representative Argenziano

**COMPANION BILL(S):** SB 164

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

- (1) UTILITIES AND COMMUNICATIONS
  - (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, 1999, \$13,404,768.

The bill provides refunds for eligible utility customers from the Public Service Regulatory Trust Fund.

The bill would require the PSC to notify eligible utility customers of the application for refund process and the total amount, including interest, of their refund.

The bill would require the Comptroller to receive the applications for refund, verify customer eligibility, and issue warrants.

The bill would require the appropriation of \$13,404,768 for refunds plus postage fees of \$59,085, from the Public Service Regulatory Trust Fund.

The bill would take effect upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. 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 the 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. 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 jurisdiction of October 27, 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 ratemaking. 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 ratemaking. Further, the court stated that it views:

utility ratemaking 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. 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 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 are the result of the differences in customer base, consumption and 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.

**B. EFFECT OF PROPOSED CHANGES:**

The bill would refund FWSC customers who overpaid for water and wastewater services during the period between September 15, 1993 and January 23, 1996.

The bill would require the PSC to notify eligible utility customers of the application for refund process and the total amount, including interest, of their refund.

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The bill would require the Comptroller to receive the applications for refund, verify customer eligibility, and issue warrants.

The bill would require an appropriation of \$13,404,768 for refunds, plus postage fees of \$59,085, from the Public Service Regulatory Trust Fund.

The bill takes effect upon becoming law.

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?

No.

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

No.

(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?

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:

N/A

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:

The bill would require the appropriation of \$13,404,768 for refunds and \$59,085 for postage fees from the Public Service Regulatory Trust Fund. Please see Fiscal Comments for additional information.

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

According to the PSC, there are insufficient funds in the trust fund to fund the provisions of HB155. Information compiled by the PSC indicates that the costs are \$13,404,768 in refunds to customers, \$59,085 in postage cost, and an indeterminate amount in additional costs in preparing the notice to customers and processing the requests for refund. The sum of the two known costs is \$13,463,853.

For funding purposes, the PSC has prepared projected balances of the Regulatory Trust Fund with the following amount variations for the dates of July 1, 1999 and July 1, 2000 and the statutory changes required to meet the balances.

With no changes to current law, the estimated balance available on July 1, 1999 would be \$5,039,611.

Section 367.145(3), F.S., 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 commission 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 only 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 then fees are collected once a year.

With statutory change to s. 367.145(3), F.S., to allow for the use of these funds, the estimated balance on July 1, 1999 would be \$10,458,975.

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.

No funds will be available until next year from any changes to the service charge required by s. 215.20, F.S. These charges are transferred quarterly to the General Revenue Fund. The next installment is due in April 1999. Any amendment to this section would not be effective until the next fiscal year.

With no change to current law, the estimated balance available on July 1, 2000 would be \$5,395,033. (The increase from 1999 is the approximate interest revenue build up.)

With the statutory change to s. 367.145(3), F.S., the estimated balance available on July 1, 2000 would be \$10,834,125.

With the statutory changes to ch. 215, F.S., there would be an additional \$2,753,982 available in the trust fund on July 1, 2000.

The estimated balance available on July 1, 2000 with: 1) the current balance, 2 ) the statutory change to s. 367, F.S., 3) statutory changes to ch. 215 would be \$13,774,342.

Additionally, the PSC states that it continues to review the level of regulatory assessment fee rates on an annual basis and makes adjustments as necessary to maintain an adequate cash balance and to appropriately match regulatory costs to revenues for each industry. The fees for the investor-owned electric utilities has been reduced effective January 1, 1999, but the reduction was calculated into their figures.

The PSC estimates that the individual notification, customer response, verification, and preparation for issuance may be accomplished by mid-2000.

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

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

N/A

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

N/A

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

N/A

**V. COMMENTS:**

Precedence does exists for cash transfers from the Public Service Regulatory Trust Fund for activities which are not directly related to the operation of the PSC. According to the PSC, \$4,873,133 has been transferred to General Revenue since July, 1991. An example of such transfers to General Revenue from the trust fund were for expenses incurred as a result of Hurricane Opal.

According to the Comptroller's Office, its constitutional responsibilities are to process vouchers from state agencies and issue warrants. The bill requires that refund applications be submitted directly to the Comptroller and that the Comptroller determine eligibility for the refund, thereby circumventing the PSC's responsibility.

The Comptroller's Office believes this process will be more appropriately handled if the PSC receives refund applications, determine eligibility, and submit approved refunds to the Comptroller who would then in turn issue warrants.



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Moreover, the Comptroller's Office has indicated that it lacks the staff to participate in this project beyond what is constitutionally required of the its office.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

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