

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 47 Municipal Water and Sewer Utility Rates
SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee, Robinson, F.
TIED BILLS: **IDEN./SIM. BILLS:** SB 104

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	15 Y, 0 N, As CS	Bauldree	Keating
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Municipalities are authorized by general law to provide water and sewer utility services and to set the rates, fees, and charges for such services. These utility systems are exempt from the rate-setting jurisdiction of the Florida Public Service Commission. A municipality that provides water or sewer utility service outside of its municipal boundaries may impose, subject to limits specified in Florida law, higher rates, fees, and charges on consumers receiving service outside of its boundaries as compared to the rates, fees, and charges imposed on consumers within its boundaries. Most municipal utility systems are governed by the municipality's governing body (i.e., the city commission).

The bill states that a municipality which operates a water or sewer utility outside its municipal boundaries must charge consumers outside its boundaries the same rates, fees, and charges as it charges consumers within its boundaries if:

- The consumers are located in a separate municipality, and
- The charging municipality uses a water or sewer treatment plant located in the separate municipality to serve those consumers.

The bill does not appear to impact state government revenues or state or local government expenditures. The bill may have a negative fiscal impact on certain local revenues. See Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2024.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Pursuant to s. 2(b), Art. VIII of the State Constitution, municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services. Municipalities may exercise any power for municipal purposes, except when expressly prohibited by law.¹ The legislative body of each municipality has the power to enact legislation on any subject upon which the state Legislature may act with certain exceptions.² Under their home rule power and as otherwise provided or limited by law or agreement, municipalities may provide utilities to citizens and entities within the municipality's corporate boundaries, in unincorporated areas, and even in other municipalities.

Municipalities are authorized by general law to provide water and sewer utility services.³ With respect to public works projects, including water and sewer utility services,⁴ municipalities may extend and execute their corporate powers outside of their corporate limits as "desirable or necessary for the promotion of the public health, safety and welfare."⁵ A municipality may not extend or apply these corporate powers within the corporate limits of another municipality.⁶ However, it may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions.⁷ An informal study conducted in 2014 indicated that approximately 250 municipalities provide water service and approximately 220 municipalities provide wastewater service. Of these municipalities, the study found that approximately 140 provide water and/or waste water services to consumers outside of their municipal boundaries, which may include consumers in unincorporated areas of counties or in other municipalities.⁸ These utility systems are exempt from the jurisdiction of the Florida Public Service Commission.

A municipality that operates a water or sewer utility outside of its municipal boundaries may impose higher rates, fees, and charges on consumers receiving service outside of its corporate boundaries as compared to the rates, fees, and charges imposed on consumers within its boundaries. The municipality can accomplish this in two ways:

- First, for consumers outside of its boundaries, it may add a surcharge of up to 25 percent of the rates, fees, and charges imposed on consumers within its boundaries. This mechanism does not require a public hearing.⁹

¹ Section 166.021(2), F.S., provides that any activity or power which may be exercised by the state or its political subdivisions is considered a municipal purpose.

² Pursuant to s. 166.021(3), F.S., a municipality may not enact legislation on the following: the subjects of annexation, merger, and exercise of extraterritorial power, which require general law or special law; any subject expressly prohibited by the constitution; any subject expressly preempted to state or county government by the constitution or by general law; and any subject preempted to a county pursuant to a county charter adopted under the authority of the State constitution.

³ Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

⁴ Other public works projects authorized under s. 180.06, F.S., include alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes, garbage collection and disposal, airports, hospitals, jails, golf courses, gas plants and distribution systems, and related facilities.

⁵ S. 180.02(2), F.S.

⁶ *Id.*

⁷ S. 180.19, F.S.

⁸ Analysis of House Bill 813 (2014), Florida House of Representatives.

⁹ S. 180.191(1)(a), F.S.

- Second, it may set separate rates, fees, and charges for consumers outside its boundaries based on the same factors used to set rates for consumers within its boundaries. It may add a surcharge of up to 25 percent of these charges, provided that the total of all such rates, fees, and charges for service to consumers outside its boundaries may not exceed the total charges to consumers within its boundaries by more than 50 percent for corresponding service. Rates set in this manner require a public hearing at which all users served or to be served by the water or sewer utilities and all other interested persons will have an opportunity to be heard concerning the proposed rates.¹⁰

For example, the City of North Miami Beach owns the Norwood Water Treatment Plant, which is located in Miami Gardens, and charges consumers outside of North Miami Beach municipal boundaries a 25% surcharge, including consumers in Miami Gardens.¹¹ However, there is no central repository for information concerning municipal water or sewer service rates that identifies municipalities that impose higher rates on consumers outside of the municipal boundaries, the specific mechanism used by such municipalities to establish such rates, or the level of any additional charge or surcharge imposed.

Effect of the Bill

The bill states that a municipality which operates a water or sewer utility outside its municipal boundaries must charge consumers outside its boundaries the same rates, fees, and charges as it charges consumers within its boundaries if:

- The consumers are located in a separate municipality, and
- The charging municipality uses a water or sewer treatment plant located in the separate municipality to serve those consumers.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 180.191, F.S., relating to limitation on rates charged consumer outside city limits.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a negative fiscal impact on municipalities which own and operate water or sewer utilities and serve consumers located in another municipality with facilities located in the recipient municipality, as it reduces the amount that those municipal water and sewer utilities that use such facilities can charge such consumers.

¹⁰ S. 180.191(1)(b), F.S.

¹¹ Kevin Ozebek & Leisa Williams, *New study reveals how much more some Miami Gardens residents are paying for water*, WSVN (January 19, 2023), <https://wsvn.com/news/investigations/new-study-reveals-how-much-more-some-miami-gardens-residents-are-paying-for-water/> (last visited January 5, 2024).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in cost savings to certain municipal water and sewer utility consumers located outside of municipal boundaries.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18(b), of the Florida Constitution may apply because this bill reduces the amount that certain municipal water and sewer utilities can charge consumers outside of the municipal boundaries. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill applies to municipal water and sewer utilities that serve consumers in another municipality using a “facility or water sewer plant” located in that other municipality. This provision could be broadly applied to all municipal water and sewer utilities that serve consumers in another municipality if the term “facility” is construed to include the pipes used to serve those consumers.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 10, 2024, the Energy, Communications & Cybersecurity Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment clarified that the bill applies to municipal water or sewer utilities serving consumers within the boundaries of a separate municipality using a “water treatment plant or sewer treatment plant” within the boundaries of that separate municipality.

This analysis is drafted to the committee substitute as passed by the Energy, Communications & Cybersecurity Subcommittee.