

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1331 Municipal Utilities
SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Energy, Communications & Cybersecurity Subcommittee		Walsh	Keating

SUMMARY ANALYSIS

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. 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.

Many municipalities own and operate electric utilities and natural gas utilities and govern the operation of those utilities through ordinance, code, or policies. Municipalities are also authorized by general law to provide water and sewer utility services. 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. Municipalities routinely transfer a portion of their utility earnings to their general funds for non-utility purposes, though the amounts and percentages may vary widely among municipalities.

The bill places limits on the portion of municipal utility revenues that may be used to fund or finance a municipality's non-utility related general government functions. In doing so, the bill limits the rate of transfer for municipal electric, natural gas, and water or wastewater utilities. Under the bill, the greater the proportion of customers outside of the city boundaries that a municipal utility serves, the lower the cap is on transfers. However, if a municipal utility is governed by a utility authority board that, through the election of voting members from outside the municipal boundaries, provides for representation of retail customers located outside the municipal boundaries approximately proportionate to the percentage of such customers, then transfers of revenue are not subject to a reduced cap.

The bill removes a provision allowing water or sewer utilities to add, for consumers outside of its boundaries, a surcharge of up to 25 percent of the rates, fees, and charges imposed on consumers within its boundaries. Furthermore, the bill changes the limit on the rates, fees, and charges such utility can impose on customers outside of municipal boundaries to no more than 25 percent above the total amount the municipal water or sewer utility charges customers within the municipal boundaries, provided rates for outside customers are set in a public hearing using the same methods as rates for other customers.

The bill limits the rates, fees, and charges that a municipal water or sewer utility that provides service to consumers within the boundaries of a separate municipality, using a water treatment plant or sewer treatment plant located within the boundaries of that separate municipality, by requiring that such charges are no more than the rates, fees, and charges imposed on consumers inside its own municipal boundaries.

The bill will not impact state government revenues and 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

Local Government Utility Services

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.

Many municipalities own and operate electric utilities and natural gas utilities and govern the operation of those utilities through ordinance, code, or policies. Currently, there are 33 municipal electric utilities in the state.³ Municipal electric and natural gas utility rates are not directly regulated by the Florida Public Service Commission (PSC), however, the PSC does have jurisdiction over municipal electric utilities for matters related to rate structure, power plant transmission line site certification, general reporting jurisdiction, service territory and territory disputes, energy efficiency reporting, ten year site plans, reporting on system hardening and resiliency, reporting on net metering, audits related to regulatory assessment fees, monitoring renewable energy, reporting on facilities inspection and vegetation management, and grid bill jurisdiction.⁴

Municipalities are authorized by general law to provide water and sewer utility services.⁵ With respect to public works projects, including water and sewer utility services,⁶ 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."⁷ A municipality may not extend or apply these corporate powers within the corporate limits of another municipality.⁸ 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.⁹ 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

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 Presentation on *Florida Public Power*, Florida Municipal Electric Association (Feb. 9, 2023), slide 2, available at <https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3226&Session=2023&DocumentType=Meeting+Packets&FileName=ecc+2-9-23.pdf>.

⁴ *Id.* at slide 3.

⁵ 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.

⁶ 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.

⁷ S. 180.02(2), F.S.

⁸ *Id.*

⁹ S. 180.19, F.S.

customers outside of their municipal boundaries, which may include customers in unincorporated areas of counties or in other municipalities.¹⁰ These utility systems are exempt from PSC jurisdiction.

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.¹¹
- 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.¹²

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.

Most municipal utility systems are governed by the municipality's governing body (i.e., the city commission). Six municipal electric utility systems in Florida are governed by separate utility boards, or "authorities," which are typically appointed by the municipality's governing body.¹³ These utility authorities vary in structure, though the charter documents for each generally address the powers and duties of the authority (including terms related to rate-setting, financing, acquisitions, and eminent domain), the selection process for authority members (including qualifications and terms of office), the management and personnel of the authority, the transfer of revenues from utility operations to the municipality, and the degree of continuing oversight by the municipal governing body.

Current law authorizes municipalities to raise amounts of money which are necessary for the conduct of the municipal government. A municipality may do so by taxation and licenses authorized by Florida's constitution or general law, or by user charges or fees authorized by ordinance.¹⁴ Municipalities routinely transfer a portion of their utility earnings to their general funds for non-utility purposes, though the amounts and percentages may vary widely among municipalities.¹⁵ These transfers may be limited in some circumstances by ordinance, but they are not governed by state law.

Effect of the Bill

The bill places limits on the portion of municipal utility revenues that may be used to fund or finance a municipality's non-utility related general government functions. In doing so, the bill limits the rate of transfer for municipal electric, natural gas, and water or wastewater utilities. Under the bill, the greater the proportion of customers outside of the city boundaries that a municipal utility serves, the lower the cap is on transfers.

¹⁰ Analysis of House Bill 813 (2014), Florida House of Representatives.

¹¹ S. 180.191(1)(a), F.S.

¹² S. 180.191(1)(b), F.S.

¹³ The Keys Energy Services Utility Board is the only utility authority in the state with elected board members. Key West has an elected board, with 2 of the 5 members from outside the city limits. Presentation on *Florida Public Power*, Florida Municipal Electric Association *supra* n. 6, slide 8.

¹⁴ S. 166.201, F.S.

¹⁵ Presentation on *Florida Public Power*, Florida Municipal Electric Association *supra* n. 6, slide 6.

Under the bill, revenues transferred to fund or finance non-utility governmental functions, which were generated by a municipal electric utility, may not exceed a rate equal to the amount derived by applying the average of the midpoints of the rates of return on equity approved by the PSC for each investor-owned electric utility in the state.

Similarly, the bill limits revenues transferred to fund or finance non-utility governmental functions, which were generated by a municipal natural gas utility by capping the transfer at a rate equal to the amount derived by applying the average of the midpoints of the rates of return on equity approved by the PSC for each investor-owned natural gas utility in the state.

Under the bill, revenues generated from a municipal water or wastewater utility may only be transferred at a rate equal to the amount derived by applying the rate of return on equity established by the PSC under s. 367.081(4)(f), F.S.¹⁶

The bill provides for reduction to these transfer caps based on the percentage of utility customers outside the city boundaries, as measured by total meters served. Under the bill, if more than:

- 15 percent of a municipal utility's customers are located outside of municipal boundaries, then the transfer rate applied to utility revenues will be reduced by 150 basis points.¹⁷
- 30 percent of a municipal utility's customers are located outside of municipal boundaries, then the transfer rate applied to utility revenues will be reduced by 300 basis points.
- 45 percent of a municipal utility's customers are located outside of municipal boundaries, then the transfer rate applied to utility revenues will be reduced by 450 basis points.

However, if a municipal utility is governed by a utility authority board that, through the election of voting members from outside the municipal boundaries, provides for representation of retail customers located outside the municipal boundaries approximately proportionate to the percentage of such customers, as measured by total meters served, then transfers of revenue are not subject to the above reductions.

The bill removes the provision allowing water or sewer utilities to add, for consumers outside of its boundaries, a surcharge of up to 25 percent of the rates, fees, and charges imposed on consumers within its boundaries. Furthermore, the bill changes the limit on the rates, fees, and charges such utility can impose on customers outside of municipal boundaries to no more than 25 percent above the total amount the municipal water or sewer utility charges customers within the municipal boundaries, provided rates for outside customers are set in a public hearing using the same methods as rates for other customers.

The bill limits the rates, fees, and charges that a municipal water or sewer utility that provides service to consumers within the boundaries of a separate municipality, using a water treatment plant or sewer treatment plant located within the boundaries of that separate municipality, by requiring that such charges are no more than the rates, fees, and charges imposed on consumers inside its own municipal boundaries.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 166.201, F.S., relating to taxes and charges.

Section 2: Amends s. 180.191, F.S., relating to limitation on rates charged consumer outside city limits.

¹⁶ Section 367.081, F.S., permits the PSC to establish a leverage formula that reasonably reflect the range of returns on common equity for an average water or wastewater utility and which must be used to calculate the last authorized rate of return on equity for any utility which otherwise would have no established rate of return on equity.

¹⁷ Basis points are commonly used to measure interest rates and percentages in finance, showing the change in the value or rate of a financial instrument, such as 1% change equals a change of 100 basis points and 0.01% change equals one basis point. Jason Fernando, *Basis Point (BPS) Explained for Interest Rates and Investments* (Jul. 5, 2022), Investopedia, <https://www.investopedia.com/terms/b/basispoint.asp> (last visited Mar. 20, 2023).

Section 3: 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 will likely have a negative fiscal impact on local governments which own and operate water or wastewater utilities, as it reduces the maximum amount that municipal water and sewer utilities can charge customers outside the municipal boundaries.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

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 maximum amount that municipal water and sewer utilities can charge customers outside 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

