

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 851 Manatee County

**SPONSOR(S):** Boyd

**TIED BILLS:** None. **IDEN./SIM. BILLS:** None.

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N	Darden	Miller
2) Regulatory Affairs Committee		Whittier	Hamon

### SUMMARY ANALYSIS

Under ch. 153, F.S., unpaid water and sewer bills to county governments create a lien on the property or parcel serviced. Counties are able to initiate foreclosure proceedings to collect on this lien. The Manatee County Utility System (utility system) was authorized by a special act that not did create a lien on parcels or property for unpaid utility bills.

The bill amends Chapter 63-1598, Laws of Florida, to place a lien on property for unpaid utility bills to Manatee County. The bill does not allow the county to foreclose on the property solely on the basis of this lien.

The Economic Impact Statement, signed by an employee of the Manatee County Board of County Commissioners, stated the bill would have no fiscal impact. However, the utility system has written off over \$6,000,000 in bad debt over the five most recent fiscal years.

The bill provides that the act shall take effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### General Law

To address an historic lack of water and sewer systems in unincorporated areas, the Legislature authorized counties to construct such systems.<sup>1</sup> Counties are required to set a schedule of rates, fees, and other charges for water and sewer service.<sup>2</sup> These fees must be sufficient, when combined with other county funds appropriated for the purpose, to fund the operation and maintenance expenses of the water system, including the payment of principal and interest on revenue bonds issued for the system.<sup>3</sup>

To help ensure prompt payment, the statute provides that any unpaid balance and all interest accruing on that balance creates a lien on the parcel or property receiving service.<sup>4</sup> This lien has priority over the interests of any owner, lessee, tenant, mortgagee, or other person.<sup>5</sup> The lien is considered to be on the same level as that of any outstanding taxes owed to the county.<sup>6</sup> If the unpaid balance is greater than thirty days old, the county may file a civil action to recover the balance, interest, and any attorney fees and court costs associated with the action.<sup>7</sup> The county may foreclose upon this lien as the foreclosure of a mortgage on real property.<sup>8</sup>

##### Manatee County

The Manatee County Utility System does not fall under the auspices of ch. 153, F.S., since it was created by special act.<sup>9</sup> The act authorized the county to construct a water and sewer system.<sup>10</sup> The county may charge “fees, rental, and other charges” according to a schedule of rates set by the Manatee County Board of County Commissioners.<sup>11</sup>

Under current law, the only tool available to the county to collect unpaid utility bills is to discontinue and shut off services for nonpayment.<sup>12</sup> The county is allowed to shut off services until the debtor has paid the outstanding balance in full, including interest and any disconnection fees.<sup>13</sup> The county may also file suit in a court of competent jurisdiction for the recovery of fees, plus any reasonable attorney’s fees.<sup>14</sup>

The county currently charges a late fee for past due bills and sends a final notice to a debtor if the account balance is over \$200.<sup>15</sup> After final notice is sent, the county turns off water service and requires a \$50 reconnection fee and the payment of the past due amount to restore service.<sup>16</sup> If the debtor is a tenant, the county closes the account and the landowner is notified and established as a new customer

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<sup>1</sup> S. 153.51, F.S.

<sup>2</sup> S. 153.64(1), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> S. 153.67, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Ch. 63-1598, Laws of Fla.

<sup>10</sup> Ch. 63-1598, s. 7(1), Laws of Fla.

<sup>11</sup> Ch. 63-1598, s. 7(4), Laws of Fla.

<sup>12</sup> Ch. 63-1598, s. 14, Laws of Fla.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> “Manatee County Utility Delinquent Account Collection Process Overview,” provided in an email from Cari Roth, Dean Mead, Re: HB 851, March 21, 2015. A copy of the Collection Process Overview is attached as Appendix A.

<sup>16</sup> *Id.*

until an account is established in the name of a new tenant.<sup>17</sup> The county makes attempts throughout this process to identify the debtor to collect the past due amount.<sup>18</sup>

The inability to effectively recover unpaid utility fees has placed a financial burden on the county. According to figures provided by the Manatee County Utility System, the System wrote off \$875,080 in bad debt during Fiscal Year 2014 and has written off almost \$6,000,000 in bad debt over the course of the five most recent fiscal years.<sup>19</sup> The adopted Manatee County utility budget for Fiscal Year 2014 was \$99,140,723<sup>20</sup> and the utility system had total bonded debt outstanding of \$121,205,000.<sup>21</sup>

### **Effect of Proposed Changes**

The bill amends Chapter 63-1598, Laws of Florida, to make unpaid fees, rentals, rates, or other charges to the Manatee County Utility System a lien upon the property serviced. The bill would enable the county to enforce the lien on the property, pursuant to s. 153.67, F.S., which allows county water and sewer districts to enforce liens for unpaid fees. The bill would not, however, allow Manatee County to initiate a foreclosure action solely on the basis of the utility lien created by this bill.

The bill would improve the financial situation of the Manatee County Utility System by giving the county an additional enforcement tool to collect unpaid fees.<sup>22</sup> The bill would also benefit utility customers who make prompt payments, by reducing the extent to which they face higher fees to make up shortfalls caused by the non-payment of others.<sup>23</sup>

The county has made a commitment to conduct public hearings to evaluate, discuss, and consider the utility lien collections process before implementation of the provisions of the bill.<sup>24</sup>

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends Chapter 63-1598, Laws of Florida, authorizing the Manatee County Utility System to place a lien on property for unpaid fees.

**Section 2:** Provides that the act shall take effect upon becoming law.

## **II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? December 15, 2014

WHERE? Bradenton Herald, a daily newspaper published in Manatee County, Florida.

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN?

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Email from Cari Roth, Dean Mean, RE: Info on Manatee County Utilities HB 851 (03/09/15). Email retained by House Local Government Affairs Subcommittee staff.

<sup>20</sup> Manatee County, *Fiscal Year 2015 Adopted Budget*, at 178, available at <http://www.mymanatee.org/home/government/departments/financial-management/budget-downloads.html> (accessed 3/13/15).

<sup>21</sup> *Id.*

<sup>22</sup> Economic Impact Statement for HB 851 (2015).

<sup>23</sup> *Id.*

<sup>24</sup> Letter from Betsy Benac, Chair of the Manatee County Commission to Rep. Steube, as chair of Manatee County local delegation, March 19, 2015. A copy of this letter is attached as Appendix B.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached ☒ No ☐

### **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not provide authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

## **APPENDIX A: Manatee County Utility Delinquent Account Collection Process Overview**

The Manatee County Utilities Department provides and bills for water, sewer and garbage collection. The Utilities Department has 95,348 water metered accounts, 59 sewer only accounts, 264 garbage and sewer only accounts, and 8,187 garbage accounts with no water or sewer service.

The Utility Department makes every effort to collect unpaid fees and service charges, but some remain uncollectible. When utility bills are unpaid and collection efforts fail, these charges are written-off and the cost is ultimately borne by the paying customers. A lien provides another tool for collection. Any outstanding charges that are collected benefit other Utility customers and ensure a fair distribution of the system cost among rate paying customers.

The existing collections process for utility accounts is based on the Utility's special act, specifically Section 14 of Chapter 63-1598, and Sec. 2-31-266 of the County's Code (Ord. No. 07-62, § 1, 8-7-07; Ord. No. 10-69, §§ 18, 19, 11-9-10; Ord. No. 14-09, § 12, 1-29-14)

### **Existing Collection Process: (Utility system customers are notified of their responsibilities for payment and procedures for collection of past due accounts when opening an account.)**

- Customer is billed and given 21 days to make payment.
- On the 23<sup>rd</sup> day, a late charge of \$5 is assessed to the account.
- Between the 23<sup>rd</sup> day and the 31<sup>st</sup> day, the customer is called for collection.
- **A payment arrangement may be entered into, allowing for regularly scheduled payments of the past due amount.**
- If the balance on the account is \$200 or more a final notice is sent.
- On the 32<sup>nd</sup> day, a turn-off service order is initiated if the past due account balance exceeds \$200. Turn-off orders are only issued for accounts receiving water service and are usually processed in a few business days.
- The turn-off will often generate a phone call from the customer at which time full payment of past due amounts are required to have service restored.
- A reconnection fee of \$50.00 is charged to the account.
- Tenants with discontinued service due to delinquency will have their accounts closed and the owner according to the public records will be notified and established as the customer and will be billed monthly customer base charges until an account is established in the name of a new tenant.
- The account remains in active status until the Utility is notified that ownership has transferred to another or that a new tenant has moved in and established service.
- **Attempts are made throughout this time to verify correct address, phone number, etc. in order to contact customer to collect past due funds.**

Upon reaching inactive status the account will be sent to a collection agency. (Accounts are transferred daily after they have been inactive for a total of 60 days past the final bill due date.) The collection agency retains 18% of funds collected.



**MANATEE COUNTY  
FLORIDA**

March 19, 2015

The Honorable Greg Steube  
State Representative, District 73  
204 House Office Building  
402 South Monroe Street  
Tallahassee, FL 32399-1300

Dear Chairman Steube:

As you know, HB 851, Manatee County's utility lien bill will provide our utility system with a new ability to pursue a collection process on a relatively small number of unpaid accounts. Currently, these unpaid accounts are liabilities that are ultimately passed along to prompt paying customers in the form of higher rates. We view this ability to collect on unpaid accounts as a fairness issue, and for the past three years the bill has been a legislative priority of the County Commission.

As the governing body of our public utility system, the Manatee Board of County Commissioners has the responsibility over the utility system and all collections procedures. In the event HB 851 is approved by the Florida Legislature, I want to assure you that the County Commission will have a public hearing to evaluate, discuss and consider the utility lien collections process. The hearing will be advertised and noticed in hopes of generating public feedback that may improve our process. Our goal is to encourage good communication with and prompt payment from our utility customers.

We value our delegation and the work that you do for our community and shared constituents. We also welcome and value your unique perspective as a property owner and real estate attorney. If you have suggestions on how we may structure our utility lien procedure, or any other utility collection procedure, we would be happy to receive them. Please feel free to contact me with any questions.

Thank you again,

A handwritten signature in blue ink, appearing to read "Betsy Benac".

Betsy Benac  
Chairman, Manatee County Commission

Board of County Commissioners  
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