

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 5, 1998 Revised: _____

Subject: Municipal Water and Sewer Utilities

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Schmith</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable</u>
2.	<u>Matthews</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill revises the statute limiting the rates, fees and charges imposed by a municipal water or sewer utility on consumers outside its municipal boundaries. The bill deletes all exceptions to and exemptions from application of the statute so that all municipal water and sewer utilities are treated equally under the law.

The bill substantially amends section 180.191 of the Florida Statutes.

II. Present Situation:

Section 180.19, F.S., provides that a municipality under the Municipal Public Works Law may permit another municipality and the owners of property outside its corporate limits or within the limits of another municipality to connect with or use such utilities.

Section 180.191, F.S., governs rates charged by a municipal water or sewer utility to consumers outside its city limits. The purpose of the statute is to limit the rates, fees and charges by a municipally-owned water or sewer utility to consumers outside its boundaries.

Subsection (1) provides that a municipally owned water or sewer utility operating outside its city limits may charge consumers outside its municipal boundaries either:

- ▶ *the same rates, fees and charges* charged consumers within its boundaries plus a maximum surcharge of 25% in which case *no public hearing* is required except as may be provided for service to consumers within its boundaries; or

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- ▶ *just and equitable rates, fees and charges* based on the same factors used in fixing those charged to consumers within its boundaries, plus *a maximum surcharge of 25%* in which case a *public hearing is required* for all system users. However, the *total* of rates, fees and charges to consumers outside the municipal boundaries *can not exceed more than 50 percent* of the total of the rates, fees and charges to consumers within the municipal boundaries.

Subsection (2) provides for enforcement of subsection (1) and (5) through a civil action for preventive relief, including but not limited to a permanent or temporary injunction, and restraining order.

Subsection (3) provides that a municipal water and sewer utility operating within the confines of one county *shall* charge consumers outside its boundaries in accordance with subsection (1), while municipal water and sewer utilities operating beyond the confines of one county, pursuant to an interlocal agreement, *may* charge consumers in accordance with subsection (1).

Subsection (4) provides that unless a municipality located in a home rule charter county with a regulatory agency obtains a regulatory exemption from the county under the conditions set forth in paragraph (b) of subsection (5), said municipality can not charge consumers outside its boundaries rates within the limits set under s. 180.191, F.S.

Subsection (5) sets forth the terms under which a municipal water and sewer utility located in a county with a regulatory agency can charge consumers outside its boundaries rates within the limits set under s. 180.191, provided it obtains a county exemption. Paragraph (a) of subsection (5) *requires* a municipally owned water and sewer utility operating outside its boundaries, and which exempts itself from county rate regulation, to charge consumers outside its municipal boundaries *the same just and equitable rates, fees and charges* charged consumers within its boundaries. Paragraph (b) of subsection (5) specifies the conditions under which a municipal water and sewer utility operating outside its boundaries but within a county regulating water and sewer rates on or before May 1, 1988, can exempt itself from county rate regulations:

- ▶ the utility must have offered water and sewer services to consumers outside its boundaries prior to the date the county began regulating water and sewer rates,
- ▶ the municipality must adopt an ordinance bringing its water and sewer system rate structure into compliance with subsection (1) and declaring its exemption from county rate regulation, and
- ▶ the municipality must remain in compliance.

Subsection (6) provides for attorney's fees and treble damages to the prevailing party in any action under this section.

Historical Note:

As originally enacted, the statute applied only to municipally-owned water and sewer utilities within the confines of one county. [This is a limitation on the application of the statute.] The statute did not apply to a county operating under a home rule charter if the county has in operation an agency regulating water and sewer systems. [This is an exception to the application of the statute.] See ch. 70-997, *Laws of Florida*. In other words, a municipality operating water and sewer utility operating beyond the confines of a single county or in a county regulating water and sewer systems could not charge more of the consumers outside its boundaries.

Prior to 1988, Dade County, which operated under a home rule charter and regulated water and sewer systems through its own agency, required the water and sewer utility of the City of North Miami Beach to provide its services to consumers outside its municipal boundaries at rates *below* those charged to customers within its municipal boundaries. See Staff Analysis & Economic Impact Statement for House Bill 1035, House Committee on Regulated Industries & Licensing (April 18, 1988). In response to arguments from the City of North Miami Beach that its city residents were subsidizing water and sewer services provided to consumers outside the municipal boundaries, the Legislature enacted chapter 88-301, Laws of Florida, revising s. 180.191, F.S.

Chapter 88-301, Laws of Florida, amended subsection (4) and created subsection (5) of s. 180.191, F.S., to provide exemptions to the exception from 180.191, F.S., for a municipality operating water and sewer utilities within the confines of one county with its own water and sewer regulatory agency. In relevant part, ch. 88-301, L.O.F., provided that a system located within a county that was regulating water and sewer rates on or before May 1, 1998, could surcharge rates of outside consumers under specified conditions pursuant to subsection (1) of s. 180.191, F.S. According to the 1988 staff analysis, the City of North Miami Beach was the only city known to qualify for the exemption in paragraph (b) of subsection (5), and the city estimated that the law would enable its residents to save \$350,000 per year, passing those costs along to outside consumers.

In 1992, the City of North Miami Beach again sought an amendment to s. 180.191, F.S., this time for relief from the limitation in subsection (3) that the statute only applies to a municipality operating water and sewer utilities outside its municipal boundaries, *and within the confines of a single county*. Since the city was providing water and sewer services to both Dade and Broward counties, it could no longer exercise the exemption from county regulation provided by ch. 88-301, L.O.F. See Bill Analysis & Economic Impact Statement for House Bill 859, Committee on Regulated Industries & Technology (January 21, 1992).

The Legislature enacted ch. 92-181, Laws of Florida, which amended subsection (3), the limitation on application of the statute. The amendment applied the provisions of the statute to a municipally-owned water and sewer utility operating beyond the confines of a single county *by interlocal agreement*. The amendment also deleted from subsection (5) the limitation that the municipality be operating a water and sewer utility within the confines of a single county in order to qualify for exemption from county regulation.

III. Effect of Proposed Changes:

The bill deletes subsection (4) of 180.191, F.S., relating to the eligibility of a municipal water and sewer utility located within a home rule charter county with a regulatory agency to charge consumers outside their boundaries rates within the limits set under this section, provided they secure an exemption from county rate regulation. The bill also deletes subsection (5) of s. 180.191, F.S., relating to the specific conditions for obtaining an exemption from county rate regulation in order for a municipal water and sewer utility located in a county with a regulatory agency to charge consumers outside its boundaries rates within the limits set in subsection (1) of s. 180.191, F.S.

Therefore any municipal water and sewer utility (regardless of its location in a charter or noncharter county with a regulatory agency) operating within or outside the confines of one county, pursuant to an interlocal agreement, may charge consumers outside its boundaries either the “same” rates plus a maximum 25% surcharge without a public hearing, or “just and equitable” rates plus a maximum 25% surcharge but not to exceed 50% of the total rates charged consumers within its boundaries after a public hearing.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Water and sewer rates for consumers served by the City of North Miami Beach outside municipal boundaries may increase, as authorized by subsection (1) of s. 180.191, F.S.

C. Government Sector Impact:

The bill is filed on behalf of the City of North Miami Beach, the only municipality whose rate-setting authority is treated differently under the law. The bill lifts the restrictions and authorizes it to set rates within the limits accorded other municipal water and sewer utilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.