

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: SB 104

INTRODUCER: Senator Jones

SUBJECT: Municipal Water and Sewer Utility Rates

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Imhof</u>	<u>RI</u>	<u>Favorable</u>
2.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 104 creates an exception to the maximum rates that may be charged to municipal water and sewer utility customers who are outside of the corresponding municipality’s boundaries. The bill provides that if a municipal utility provides water and sewer services to another municipality, and serves that other municipality using a facility or water or sewer plant located within that other municipality, then the utility must charge its customers within that other municipality the same rates, fees, and charges as it does for those customers within its own municipal boundaries.

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

II. Present Situation:

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.¹ The role of the PSC is to ensure Florida’s consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.² In order to do so, the PSC exercises authority over public utilities³ in one or more of the following areas: rate base or economic regulation; competitive market oversight; and

¹ Section 350.001, F.S.

² See Florida Public Service Commission, About Us, <https://www.psc.state.fl.us/about> (last visited Jan. 22, 2024).

³ Under s. 366.02, F.S., a “public utility” is defined “as every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state.” There are, however, several exceptions to this definition, which include, “a cooperative now or hereafter organized and existing under the Rural Electric Cooperative Law of the state; a municipality or any agency thereof; [and] any dependent or independent special natural gas district.” Generally, “public utility” means investor-owned utilities.

monitoring of safety, reliability, and service issues.⁴ PSC authority over municipal utilities is more limited, however.

Water and Wastewater Utilities

Florida's Water and Wastewater System Regulatory Law, ch. 367, F.S., regulates water and wastewater systems in the state. Section 367.011, F.S., grants the PSC exclusive jurisdiction over each utility with respect to its authority, service, and rates. For the chapter, a "utility" is defined as "a water or wastewater utility and, except as provided in s. 367.022, F.S., includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation." In 2022, the PSC had jurisdiction over 149 investor-owned water and/or waste-water utilities in 38 of Florida's 67 counties.⁵

Section 367.022, F.S., exempts certain types of water and wastewater operations from PSC jurisdiction and the provisions of ch. 367, F.S. (except as expressly provided in the chapter). Such exempt operations include: municipal water and wastewater systems, public lodging systems that only provide service to their guests, systems with a 100-person or less capacity, landlords that include service to their tenants without specific compensation for such service, and mobile home parks operating both as a mobile home park and a mobile home subdivision that provide "service within the park and subdivision to a combination of both tenants and lot owners, provided that the service to tenants is without specific compensation," and others.⁶ The PSC also does not regulate utilities in counties that have exempted themselves from PSC regulation pursuant to s. 367.171, F.S. However, under s. 367.171(7), F.S., the PSC retains exclusive jurisdiction over all utility systems whose service crosses county boundaries, except for utility systems that are subject to interlocal utility agreements.

According to a 2017 research report from the University of North Carolina, there were 1,647 community water systems in Florida. Of those, 973 were privately owned. Florida had 371 publicly-owned treatment works facilities. The privately-owned community water systems served almost 1.4 million people, the government-owned community water systems served more than 18.4 million people, and the publicly-owned treatment works facilities served just over 13 million people.⁷

⁴ Florida Public Service Commission, *About the PSC*, *supra* note 2.

⁵ Florida Public Service Commission, *2023 Facts and Figures of the Florida Utility Industry*, <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202023.pdf> (last visited Jan. 22, 2024).

⁶ Section 367.022, F.S.

⁷ University of North Carolina Environmental Finance Center, *Navigating Legal Pathways to Rate-Funded Customer Assistance Programs, A Guide for Water and Wastewater Utilities* (2017), available at <https://efc.sog.unc.edu/wp-content/uploads/sites/1172/2021/06/Nagivating-Pathways-to-Rate-Funded-CAPs.pdf> (last visited Jan. 22, 2024).

Municipal Water and Sewer Utilities in Florida

A municipality⁸ may establish a utility by resolution or ordinance under s. 180.03, F.S. A municipality may establish a service area within its municipal boundary or within five miles of its corporate limits of the municipality.⁹

Under s. 180.19, F.S., a municipality may permit another municipality and the owners or association of owners of lands outside of its corporate limits or within another municipality's corporate limits to connect to its utilities upon such terms and conditions as may be agreed upon between the municipalities.

Municipal Water and Sewer Utility Rate Setting

The PSC does not have jurisdiction over municipal water and sewer utilities, and as such, has no authority over the rates for such utilities. Municipally-owned water and sewer utility rates and revenues are regulated by their respective local governments, sometimes through a utility board or commission.

Municipal Water and Sewer Utility Rates for Customers Outside of Corporate Limits

Section 180.191, F.S., provides limitations on the rates that can be charged to customers outside their municipal boundaries. The first option is that such a municipality may charge the same rates inside as outside its municipal boundaries, but may add a 25 percent surcharge to those outside the boundaries.¹⁰

Alternatively, a municipality may charge rates that are just and equitable and based upon the same factors used in fixing the rates for the customers within the boundaries of the municipality. In addition, the municipality may add a 25 percent surcharge. When a municipality uses this methodology, the total of all rates, fees, and charges for the services charged to customers outside the municipal boundaries may not be more than 50 percent in excess of the total amount the municipality charges consumers within its municipal boundaries, for corresponding service.¹¹

The rates, fees, and charges may not be set until a public hearing is held and the users, owners, tenants, occupants of property served or to be served, and all other interested parties have an opportunity to be heard on the rates, fees, and charges. Any change in the rates, fees, and charges must also have a public hearing unless the change is applied pro rata to all classes of service, both inside and outside of the municipality.¹²

The provisions of s. 180.191, F.S., may be enforced by civil action. Whenever any municipality violates, or if reasonable grounds exist to believe that a municipality is about to violate, s. 180.191, F.S., an aggrieved party may seek preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order.¹³

⁸ Defined by s. 180.01, F.S., "as any city, town, or village duly incorporated under the laws of the state."

⁹ Section 180.02, F.S.

¹⁰ Section 180.191(1)(a), F.S.

¹¹ Section 180.191(1)(b), F.S.

¹² *Id.*

¹³ Section 180.191(2), F.S.

III. Effect of Proposed Changes:

Section 1 of the bill creates an exception to the maximum rates that may be charged to municipal water and sewer utility customers that are outside of the municipality's boundaries in s. 180.191, F.S. The bill provides that if a municipal utility provides water and sewer services to a second municipality, and serves that second municipality using a facility or water or sewer plant located within that second municipality, it must charge its customers within that second municipality the same rates, fees, and charges as the customers within its own municipal boundaries.

Section 2 of the bill provides an effective date of the bill of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,¹⁴ which is \$2.3 million or less for Fiscal Year 2024-2025.¹⁵

The Revenue Estimating Conference has not reviewed SB 104. Staff estimates an indeterminate impact to municipal utility revenues. Therefore, the mandate provision may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

¹⁴ FLA. CONST. art. VII, s. 18(d). An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 22, 2024).

¹⁵ Based on the Demographic Estimating Conference's estimated population adopted on November 28, 2023. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/index.cfm> (last visited Jan. 22, 2024).

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Municipal water and sewer utility customers that are located in a different municipality than the municipality that operates the utility may see a water and sewer rate reduction under the provisions of the bill if that customer's municipality contains facilities or water or sewer plants for the utility.

C. Government Sector Impact:

Municipal governments that operate a municipal water and sewer utility, with facilities or water or sewer plants located in a second municipality, may see a reduction in utility revenue under the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The sponsor may wish to clarify the meaning of "facility" as it is used on line 56 of the bill. It is potentially ambiguous the type of utility infrastructure would qualify as a "facility." Also, to remove a potential ambiguity in the bill as to whether a facility or plant is "providing service" to customers, the sponsor may wish to consider an amendment to revise the bill to state that any facility or water or sewer plant located in a second municipality would give rise to the rate-restriction provisions of the bill.

VIII. Statutes Affected:

This bill substantially amends section 180.191 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
