

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1277 Municipal Utilities

SPONSOR(S): Local Administration, Federal Affairs & Special Districts Subcommittee, Energy, Communications & Cybersecurity Subcommittee, Busatta Cabrera

TIED BILLS: **IDEN./SIM. BILLS:** SB 1510

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	13 Y, 2 N, As CS	Bauldree	Keating
2) Local Administration, Federal Affairs & Special Districts Subcommittee	11 Y, 4 N, As CS	Burgess	Darden
3) Commerce Committee			

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. Municipalities may provide utilities to citizens and entities within the municipality's corporate boundaries and, by agreement, in unincorporated areas and in other municipalities.

Many municipalities own and operate electric and natural gas utilities. 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 vary widely among municipalities.

Under the bill, a municipality that intends to offer utility service under a new, extended, renewed, or materially amended agreement must, in conjunction with the local government of the area to be served, conduct a public meeting within the area to be served. The bill also requires municipalities that provide such service to conduct an annual customer meeting in the areas served outside the municipal boundaries. The bill limits the portion of municipal utility revenues earned from service provided outside the municipal boundaries that may be used to fund or finance the municipality's non-utility related general government functions. The bill requires each municipality which provides utility service outside of its municipal boundaries to report annually certain information to the Florida Public Service Commission (PSC) for each type of utility service it provides and requires the PSC to compile and report this data to the Legislature and the Governor.

The bill limits the rates, fees, and charges that a municipal water or sewer utility may impose on consumers outside its boundaries to no more than 25 percent above the total amount the municipal water or sewer utility charges consumers within the municipal boundaries, provided rates for outside consumers are set in a public hearing using the same methods as rates for other consumers. The bill prohibits a municipal water or sewer utility that serves 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, from imposing rates, fees, and charges higher than those imposed on consumers inside its own municipal boundaries.

The bill does not 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, 2025.

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 In general, however, local governments may enter into mutually advantageous agreements to provide services or facilities to other localities.⁹ Further, the law specifically authorizes a municipality to 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

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/publications.aspx?CommitteeId=3226&PublicationType=Committee&DocumentType=Meeting%20Packets&SessionId=99> (last visited Jan. 16, 2024)

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 See s. 163.01, F.S.

conditions.¹⁰ 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 customers outside of their municipal boundaries, which may include customers in unincorporated areas of counties or in other municipalities.¹¹ 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.¹²
- 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.¹³

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.¹⁴ 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.¹⁵ 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.¹⁶ These transfers may be limited in some circumstances by ordinance, but they are not governed by state law.

Effect of the Bill

Under the bill, a municipality that intends to offer retail electric, natural gas, water, or sewer utility service in another municipality or unincorporated area outside of the municipality's boundaries must

¹⁰ S. 180.19, F.S.

¹¹ Analysis of House Bill 813 (2014), Florida House of Representatives.

¹² S. 180.191(1)(a), F.S.

¹³ S. 180.191(1)(b), F.S.

¹⁴ 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. 3, slide 8.

¹⁵ S. 166.201, F.S.

¹⁶ Presentation on *Florida Public Power*, Florida Municipal Electric Association *supra* n. 3, slide 6.

hold a public meeting in conjunction with the governing body of each municipality or unincorporated area to be served before a new agreement to provide such service, or a renewal, extension, or material amendment of an existing agreement, may take effect. The public meeting must be held within each municipality and unincorporated area to be served for the purpose of providing information and soliciting public input on:

- The nature of the service to be provided or changes to the service being provided;
- The rates, fees, and charges to be imposed for the services provided or intended to be provided, including any differential with the rates, fees, and charges imposed for the same service on customers located within the boundaries of the serving municipality, the basis for the differential, and the length of time that the differential is expected to exist;
- The extent to which revenues generated from the provision of the service will be used to fund or finance non-utility government functions or services; and
- Any other matters deemed relevant by the parties to the agreement.

Further, the bill requires that a new agreement to provide these utility services beyond a municipality's boundaries, or an extension, renewal, or material amendment to an existing agreement, must be in writing. Under the bill, any agreement to provide water or sewer utility service must comply with the other provisions of the bill limiting rates charged to consumers outside city limits when providing such services.

The bill requires that an appointed representative¹⁷ of each municipality providing utility service in another municipality or unincorporated area outside of the municipality's boundaries must conduct an annual customer meeting in conjunction with the governing body of each municipality and unincorporated area in which it provides service. The purpose of this meeting is to receive public input on utility-related matters, including rates and service. The bill provides this meeting does not need to be a separate public meeting conducted specifically for this purpose.

Under the bill, a municipality may not transfer more than 10 percent of the gross revenues it generates from electric, natural gas, water, or sewer service provided to consumers outside its municipal boundaries to fund or finance non-utility governmental functions. Further, the bill requires excess revenue, once costs are paid to fund or finance general government functions, to be reinvested into the municipal utility or returned to customers living beyond the municipality's corporate limits.

The bill requires that by November 1, 2024, and annually thereafter, each municipality which provides utility service outside its municipal boundaries report to the PSC, for each type of utility service it provides outside of municipal boundaries, the following information:

- The number and percentage of customers that receive utility service provided by the municipality at a location outside the boundaries of the municipality;
- The volume and percentage of sales made to such customers, and the gross revenues generated from such sales; and
- Whether the rates, fees, and charges imposed on customers that receive service at a location outside the municipality's boundaries are different than the rates, fees, and charges imposed on customers within the boundaries of the municipality, and, if so, the amount and percentage of the differential.

The bill requires the PSC to compile this information and report it to the Speaker of the House of Representatives, the Senate President, and the Governor by January 31, 2025, and annually thereafter. The bill provides that it does not modify or extend the authority of the PSC otherwise provided by law with respect to any municipal utility that must report this information.

The bill removes the provision from current law 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 without a public meeting. Furthermore, the bill changes the limit on the

¹⁷ The appointed representative must be an executive-level leadership employee of the municipality, or the municipality's utility authority, board, or commission, specifically appointed by the governing body of the municipality to serve as its representative for the purpose of the meeting.

rates, fees, and charges such utilities 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, 2025.

B. SECTION DIRECTORY:

Section 1: Amends s. 180.19, F.S., relating to use by other municipalities and by individuals outside corporate limits.

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

Section 3: Provides an effective date of July 1, 2025.

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 some 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:

The bill may result in cost savings to municipal water and sewer utility customers located outside of municipal boundaries. A municipal water or sewer utility may increase rates for other customers to mitigate revenue impacts.

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:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2024, the Energy, Communications & Cybersecurity Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Provided that a new, extended, renewed, or materially amended agreement for the provision of municipal utility service at retail to customers located in another municipality or in an unincorporated area must be written and may not become effective before a public meeting is held in the service area for the purpose of providing certain information and soliciting public input on matters related to the agreement.
- Required annual customer meetings to be held in such service areas for the purpose of soliciting public input on utility-related matters.
- Required that these meetings be held in conjunction with specified governing bodies for the areas in which service is provided.
- Provided that a municipality that generates revenue from the provision of utility service to customers located in another municipality or in an unincorporated area may not use more than 10 percent of the gross revenues generated from such services to fund or finance general government functions.
- Removed provisions of the bill that limited transfers from municipal utility revenues based on rates of return on equity approved by the Public Service Commission for investor-owned utilities and based on the proportion of customers served beyond municipal boundaries.
- Required annual data reporting regarding the provision of municipal utility service to customers located in another municipality or in an unincorporated area.
- Retained provisions of the bill that reduce the maximum rate differential between municipal water and sewer utility customers located within and outside the municipal boundaries.
- Retained provisions of the bill that prohibit the imposition of a surcharge on customers located in certain other municipalities.

On January 31, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment differs from the bill as filed in that it:

- Specifies that required annual customer meetings are not required to be a separate public meeting;
- Clarifies a municipality is represented at the annual customer meeting by an appointed representative, who must be an executive-level leadership employee of the municipality or the municipality's utility authority, board, or commission; and

- Requires excess revenue, once costs are paid to fund or finance general government functions, to be reinvested into the municipal utility or returned to customers living beyond the municipality's corporate limits.

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.