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 Rules

BILL:	CS/SB 202
INTRODUCER:	Rules Committee; Senators Jones and Davis
SUBJECT:	Municipal Water and Sewer Utility Rates
DATE:	April 17, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Imhof	RI	**Favorable**
2.	Shuler	Fleming	CA	**Favorable**
3.	Schrader	Yeatman	RC	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 202 creates an exception to the maximum rates that a municipality may charge 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 or 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 provisions of the bill are limited only to counties specified in s. 125.011(1), F.S. These counties are ones that have adopted a home rule charter, by resolution of its board of county commissioners, pursuant to ss. 10, 11, and 24 of Article VIII of the Florida Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the State Constitution. Monroe, Hillsborough, and Miami-Dade counties are the only counties that could adopt a home rule charter under this provision, and, to date, only Miami-Dade has done so. Hillsborough has adopted a home rule charter, however, it has done so pursuant to Part IV of ch. 125, F.S., and, thus, would not meet the definition provided in s. 125.011(1), F.S.

The bill takes effect July 1, 2025.

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 and reliable manner and at fair prices.[2] In order to do so, the PSC exercises authority over utilities in one or more of the following areas: rate base or economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[3] 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 2023, the PSC had jurisdiction over 146 investor-owned water and/or waste-water utilities in 38 of Florida's 67 counties.[4]

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.[5] 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.

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[1] Section 350.001, F.S.
[2] *See* Florida Public Service Commission, *Florida Public Service Commission Homepage*, http://www.psc.state.fl.us (last visited Mar. 27, 2025).
[3] Florida Public Service Commission, *About the PSC*, https://www.psc.state.fl.us/about (last visited Mar. 27, 2025).
[4] Florida Public Service Commission, *2024 Facts and Figures of the Florida Utility Industry*, 29 https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202024.pdf (last visited Mar. 27, 2025).
[5] Section 367.022, F.S.

Municipal Water and Sewer Utilities in Florida

A municipality[6] 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.[7]

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 outside as inside its municipal boundaries, but may add a surcharge of not more than 25 percent to those outside the boundaries.[8] The fixing of rates, fees, or charges for customers outside of the municipal boundaries, in this manner, does not require a public hearing.

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.[9] Under this scenario, 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.[10]

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.[11] A prevailing party under

[6] Defined by s. 180.01, F.S., as "any city, town, or village duly incorporated under the laws of the state."
[7] Section 180.02, F.S., *see also* s. 180.06, F.S.
[8] Section 180.191(1)(a), F.S.
[9] Section 180.191(1)(b), F.S.
[10] *Id.*
[11] Section 180.191(2), F.S.

such an action may seek treble damages and, in addition, a reasonable attorney's fee as part of the cost.[12]

City of Miami Gardens v. City of North Miami Beach

The Norwood Water Treatment Plant (Norwood Plant), operated by the City of North Miami Beach (NMB), treats and distributes water for North Miami Beach's municipal water and wastewater utility which provides service to customers in NMB and the City of Miami Gardens. Though owned by NMB, the plant is physically located outside of the geographic boundaries of that municipality in what is now, since May 13, 2003,[13] within the geographic boundaries of Miami Gardens.[14]

On January 7, 2003, NMB adopted an ordinance, pursuant to s. 180.191, F.S., increasing the surcharge on its water and wastewater customers residing outside of its municipal boundaries. On May 22, 2017, NMB entered into an agreement for a private entity to maintain, repair and manage the Norwood Plant; however, NMB retained ownership of the plant.[15]
In December of 2018, Miami Gardens brought a class action lawsuit, which sought to represent not only itself, but also its residents who purchase water from the Norwood Plant. In part, Miami Gardens sought a declaratory judgment seeking the answers to three questions:

- If NMB assigned to a private contractor all operational responsibility for water utilities it owns that are located outside its geographical bounds, is NMB still "operating" those water utilities?
- If NMB is no longer "operating" water utilities it owns that are located outside its geographical bounds, may NMB lawfully charge a 25 percent surcharge on water provided to consumers within the City of Miami Gardens?
- Does s. 180.191, F.S., provide for the imposition of a 25 percent surcharge per billing cycle by NMB upon the City of Miami Gardens and the members of the class for water drawn from the aquifer located within the boundaries of the City of Miami Gardens which is processed in and never leaves the boundaries of the municipality?16

After the parties were given a chance to resolve the dispute for six months, the trial court eventually dismissed the complaint on four bases:

- NMB had terminated the contract with the private entity to operate the Norwood Plant, and thus the complaint was moot;
- The complaint was not supported by the plain language of s. 180.191(1), F.S;
- Statute of limitations, as the complaint had been filed 15 years after Miami Gardens was incorporated and 16 years after the surcharge had been put in place (citing to the four-year statute of limitations provided in s. 95.11(3), F.S; and
- Sovereign immunity.[17]

[12] Section 180.191(4), F.S.
[13] Miami Gardens was incorporated on May 13, 2003.
[14] *City of Miami Gardens v. City of N. Miami Beach*, 346 So. 3d 648, 650–51 (Fla. 3d DCA 2022). The City of North Miami Beach operated the Norwood Plant before the City of Miami Gardens was incorporated.
[15] *Id.*at 651.
[16] *Id.*
[17] *Id* at 653.

Miami Gardens appealed this dismissal to the Florida Third District Court of Appeal. The Third District Court reversed the dismissal and remanded the case back to the trial court, stating that:

- Sovereign immunity did not bar the claims of Miami Gardens. The court found that sovereign immunity did not apply in this matter since s. 180.191(4), F.S., clearly provides a financial damages remedy for actions pursuant to s. 180.191, F.S. In addition, the court found that sovereign immunity did not apply to refunds of previously paid illegal fees;
- Miami Gardens' allegation that an NMB-owned water treatment plant, contracted to be operated by a private party, was not entitled to assess a 25 percent surcharge on non-NMB residents, was sufficient to state a claim under s. 180.191, F.S.; and
- The matter was not moot, even though, since October 30, 2019, NMB had removed the surcharges for the services supplied to the City of Miami Gardens itself (but not for other residential and business customers) and, as of August 6, 2020, NMB had terminated its contract with the private entity operating the plant. The court found that Miami Gardens and its class still had a case and controversy as to whether it, and its residents, were due a refund and that the cessation of the surcharge was not permanent.[18]

On January 16, 2025, the trial court issued a final order approving a settlement that pays $9 million to Miami Gardens and its class from NMB.[19]

III. Effect of Proposed Changes:

Section 1 of the bill creates an exception to the maximum rates that municipalities may charge municipal water and sewer utility customers that are outside of the municipality's boundaries under 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, that municipality must charge the customers within that second municipality the same rates, fees, and charges as the customers within its own municipal boundaries.

The bill provides the following definitions:

- "Facility" means a water treatment facility, wastewater treatment facility, intake station, pumping station, well, and other physical components of a water or wastewater system. The term "facility" in the bill does not include facilities that transport water from the point of entry to a wastewater treatment facility, or from a water source or treatment facility to the customer.
- "Wastewater treatment facility" means a facility that accepts and treats domestic or industrial wastewater.
- "Water treatment facility" means a facility within a water system which can alter the physical, chemical, or bacteriological quality of water.

The provisions of the bill are limited only to counties specified in s. 125.011(1), F.S. These counties are ones that have adopted a home rule charter, by resolution of its board of county commissioners, pursuant to ss. 10, 11, and 24 of Article VIII of the Florida Constitution of 1885,

[18] *Id* at 653-58.
[19] *City of Miami Gardens v. City of North Miami Beach*, No. 2018-042450-CA-01 (Fla. 11th Cir. Ct. Jan. 16, 2025)(final order and judgment approving settlement agreement).

as preserved by Art. VIII, s. 6(e) of the State Constitution. Monroe, Hillsborough, and Miami-Dade counties are the only counties that could adopt a home rule charter under this provision, and, to date, only Miami-Dade has done so. Hillsborough has adopted a home rule charter, however, it has done so pursuant to Part IV of ch. 125, F.S.,[20] and, thus, would not meet the definition provided in s. 125.011(1), F.S.

Section 2 of the bill provides an effective date of the bill of July 1, 2025.

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,[21] which is $2.4 million or less for Fiscal Year 2024-2025.[22]

The bill provides that if a municipal utility provides water or 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 provisions of the bill are limited only to counties specified in s. 125.011(1), F.S. These counties are ones that have adopted a home rule charter, by resolution of its board of county commissioners, pursuant to ss. 10, 11, and 24 of Article VIII of the Florida Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the State Constitution. Monroe, Hillsborough, and Miami-Dade counties are the only counties that could adopt a home rule charter under this provision, and, to date, only Miami-Dade has done so. In the same situation under current law, the providing municipality could charge just and equitable rates, fees, and charges based on rate fixing factors, as well as a surcharge of up to 25 percent.

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[20] Hillsborough County, FL, Hillsborough Code, Appendix A-Legal Status Provisions of Ord. No. 83-9 (2025).
[21] 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 Mar. 5, 2025).
[22] Based on the Demographic Estimating Conference's estimated population adopted on February 6, 2025. The conference packet is *available at* http://edr.state.fl.us/Content/conferences/population/index.cfm (last visited Mar. 5, 2025).

If the anticipated effect of this provision is a not insignificant reduction in a municipality's ability to raise revenue, the bill requires approval by two-thirds vote of the membership of both chambers of the legislature.

To the extent that the limitation on fees, which are meant to cover actual costs, requires municipalities to take actions requiring the not-insignificant expenditure of funds, the bill requires a finding of important state interest and approval by two-thirds vote of the membership in order to bind municipalities. Staff is not aware of any estimates on anticipated costs associated with the bill.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

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:

None.

VIII. Statutes Affected:

This bill substantially amends section 180.191 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Rules on April 16, 2025:
The committee substitute amends SB 202 to provide that the bill's provisions only apply to counties specified in s. 125.011(1), F.S. These counties are ones that have adopted a home rule charter, by resolution of its board of county commissioners, pursuant to ss. 10, 11, and 24 of Article VIII of the Florida Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the State Constitution. Monroe, Hillsborough, and Miami-Dade counties are the only counties that could adopt a home rule charter under this provision, and, to date, only Miami-Dade has done so. Hillsborough has adopted a home rule charter, however, it has done so pursuant to Part IV of ch. 125, F.S., and, thus, would not meet the definition provided in s. 125.011(1), F.S.

B. Amendments:

None.