

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 813 Water and Wastewater Utilities

SPONSOR(S): Mayfield

TIED BILLS: **IDEN./SIM. BILLS:** SB 1248

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee		Keating	Keating
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

HB 813 amends several sections of Florida law related to the provision of water and sewer utility services by a municipality in unincorporated areas of a county. In particular, the bill:

- Prohibits the extension or application of municipal powers to engage in public works, including water and sewer utility services, in the unincorporated areas of a county without consent of the county;
- Provides counties, either upon expiration of an existing franchise agreement or other fixed term arrangement or in the absence of a fixed term, the option to acquire at fair market value any municipal water and sewer facilities that are used to serve an unincorporated area of the county;
- Limits municipal rates and charges established for customers outside the municipal boundaries to a level no more than 25 percent greater than the rates and charges applicable to customers within the municipal boundaries, and requires the PSC to review and approve any rate differential applied to customers outside the municipal boundaries;
- Establishes conditions under which a municipality, subject to PSC review, may impose an additional surcharge, not to exceed 25 percent, on customers in the unincorporated area of a county, and establishes a phase-out period for such surcharges;
- Provides that a municipal water or sewer service customer who receives service in an unincorporated area may petition the PSC to review the rates and charges of the municipality, and requires the PSC to determine whether the rates and charges are just and reasonable; and
- Requires the PSC to approve a municipality's acquisition of facilities that will be used to serve customers in unincorporated areas of a county, and identifies the information that must be provided to and reviewed by the PSC.

The bill may have a positive impact on state revenues and will increase state expenditures. The bill will reduce revenues to some municipalities that provide water and sewer service to customers outside their municipal boundaries, though a municipality may offset the revenue reduction by restructuring its rates. The bill may result in regulatory costs for municipalities that charge a rate differential for such service, or that acquire private utility systems.

This bill may be a Mandate requiring a 2/3 vote of the membership. See Mandates section of the analysis

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 1 of Article VIII of the State Constitution establishes the powers of non-charter counties and charter counties. Non-charter counties have the power of self-government as provided by general law or special law. Charter counties have broader powers; these counties have all powers of local self-government not inconsistent with general law or special law and may enact ordinances not inconsistent with general law.

Among other things, general law provides all counties the power to provide and regulate water and sewer utility services.¹ However, a county may not construct, own, or operate any water or sewer facilities on property within the corporate limits of a municipality without the consent of the municipality's governing body.² In addition, a county may not furnish any such facilities to property already being furnished similar facilities by a municipality without the consent of the municipality's governing body.³

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, and may exercise any power for municipal purposes, except when expressly prohibited by law.⁴ 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.⁵

Municipalities are authorized by general law to provide water and sewer utility services.⁶ With respect to public works projects, including water and sewer utility services,⁷ 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."⁸ A municipality may not extend or apply these corporate powers within the corporate limits of another municipality.⁹ However, it may 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 conditions.¹⁰ A recent informal survey of municipalities in Florida indicates that 254 municipalities

¹ Pursuant to s. 125.01(1)(k), F.S., a county may "provide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs." Further, s. 153.03(1), F.S., authorizes counties to "purchase and/or construct and to improve, extend, enlarge, and reconstruct a water supply system or systems or sewage disposal system or systems within such county and any adjoining county or counties . . ."

² Section 153.03(1), F.S. An exception exists where such facilities were owned by the county on such property prior to the time such property was included within the corporate limits of such municipality.

³ *Id.*

⁴ 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.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ Section 180.02(2), F.S.

⁹ *Id.*

¹⁰ Section 180.19, F.S.

provide water services and 222 municipalities provide wastewater service. Of these municipalities, 137 provide water and/or wastewater service to customers outside of their municipal boundaries, which may include customers in unincorporated areas of counties or in other municipalities.

The governing body of a municipality may create a separate board or may designate certain officers of the municipality to supervise and control the operation of its water and sewer utilities. The board or designated officers may make all necessary rules or regulations governing the use, control and operation of the utilities, subject to the approval of the city's governing body. Further, the city's governing body may establish just and equitable rates or charges to be paid for its utility services.¹¹

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

In either case, there is no requirement that the municipality establish a cost basis for any surcharge. 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.

For privately-owned utilities operating within a single county, the county has the option to regulate rates and service or allow the Public Service Commission to regulate those utilities.¹⁴ The PSC currently has jurisdiction over privately-owned water and wastewater utilities in 37 of the 67 counties in Florida.¹⁵ All water and sewer utility systems owned or operated by governmental authorities, including municipalities and counties, are exempt from regulation by the PSC.¹⁶ Further, the sale of an investor-owned water or sewer utility system to a governmental authority must be approved by the PSC as a matter of right.¹⁷ However, Florida law requires a public hearing and a public interest finding by the purchasing county¹⁸ or municipality¹⁹ prior to the purchase of a water or sewer utility system. In

¹¹ Section 180.13, F.S.

¹² Section 180.191(1)(a), F.S.

¹³ Section 180.191(1)(b), F.S.

¹⁴ Section 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this choice only after 10 continuous years of PSC regulation.

¹⁵ Counties that currently elect FPSC regulation are Alachua, Bradford, Brevard, Broward, Charlotte, Clay, Duval, Escambia, Franklin, Gadsden, Gulf, Hardee, Highlands, Jackson, Lake, Lee, Levy, Manatee, Marion, Martin, Monroe, Nassau, Okaloosa, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Seminole, St. Johns, St. Lucie, Sumter, Volusia, and Washington. See <http://www.psc.state.fl.us/utilities/waterwastewater/index.aspx> (last viewed on March 14, 2014) for a map and a list of jurisdictional and non-jurisdictional counties.

¹⁶ Section 367.022(2), F.S.

¹⁷ Section 367.071(4), F.S. Before taking official action on such an acquisition, the governmental authority must obtain from the utility or the PSC specified accounting records for the facilities, including the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction.

¹⁸ Section 125.3401, F.S.

¹⁹ Section 180.301, F.S.

particular, a county or city must consider the following in determining whether the acquisition of the water or sewer utility system is in the public interest:

- The most recent available income and expense statement for the utility;
- The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;
- A statement of the existing rate base of the utility for regulatory purposes;
- The physical condition of the utility facilities being purchased;
- The reasonableness of the purchase price and terms;
- The impacts of the purchase on utility customers, both positive and negative;
- Any additional investment required and the ability and willingness of the purchaser to make that investment;
- The alternatives to the purchase and the potential impact on utility customers if the purchase is not made; and
- The ability of the purchaser to provide and maintain high-quality and cost-effective utility service.²⁰

The county or municipality must prepare a statement showing that the purchase is in the public interest, including a summary of its experience in water or sewer utility operation and a showing of financial ability to provide the service.²¹

Effect of Proposed Changes

HB 813 amends several sections of Florida law related to the provision of water and sewer utility services by a municipality in unincorporated areas of a county and the rates charged by a municipal water and sewer utility to customers outside its municipal boundaries.

Provision of Municipal Water and Wastewater Service in Unincorporated Areas

The bill prohibits a municipality from extending or applying its corporate powers to engage in public works projects within the unincorporated areas of a county unless the county provides its express consent through a majority of its commissioners at a duly noticed meeting. This provision requires county approval of new municipal public works to be located in the unincorporated areas of a county, and it appears to require county approval of existing public works in such areas.

The bill provides conditions under which counties may acquire, at fair market value, municipal water and sewer facilities that are used to serve an unincorporated area of the county. The county would then provide service to the unincorporated area. First, if a municipality is providing service to the area under a franchise agreement with the county or pursuant to a resolution or ordinance, the county may acquire the facilities used to serve the area upon the expiration of the franchise agreement, resolution, or ordinance. Second, if the municipality is providing service to the area under a franchise agreement, resolution, or ordinance with no expiration date, the county may acquire the facilities and provide service to the area if a majority of the customers in the area agree to be served by the county. The bill requires that the customers' vote be taken by referendum or by written response to a mail survey. It is not clear whether a referendum can be conducted solely for this limited class of customers.

The bill requires PSC approval before a municipality acquires, in whole or in part, the facilities of a utility that serves customers in the unincorporated areas of a county. As part of its review, the PSC must review the utility's most recent available income and expense statement, balance sheet, contributions-in-aid-of-construction, rates, classification, and charges for service of every kind provided by the utility. The municipality must provide the PSC its proposed rate structure, including proposed rates, fees, and charges for ratepayers within the municipal boundaries and for ratepayers in

²⁰ Sections 125.3401, F.S., and 180.301, F.S.

²¹ *Id.*

unincorporated areas of the county to be served by the municipality. The bill does not provide criteria for the PSC to use to evaluate the proposed transaction.

Municipal Rates for Customers Outside the Municipal Boundaries

The bill establishes new limits for the rates and charges that municipalities may impose upon its water and sewer service customers located outside the municipal boundaries.

First, the bill tightens the limit on the total rates charged to customers outside the municipality to no more than 25 percent (rather than the current 50 percent) more than the rates charged to customers within the municipality. The bill requires that any differential between rates charged to these two customer classes be reviewed by the PSC to determine if the rates are just and equitable. This provision may be interpreted to grant the PSC full ratemaking authority over these utilities.

Second, the bill establishes limits on a municipality's authority to impose any additional surcharge (up to 25 percent) on customers in unincorporated areas of a county, effectively establishing a phase-out period for such surcharges unless approved by the PSC as follows:

- Effective July 1, 2014, a municipality may not impose *any new or increased surcharge* on such customers unless the PSC finds that the surcharge is necessary for repayment of that portion of bonds issued by the municipality to finance the facilities used to serve the unincorporated area;
- Effective July 1, 2018, a municipality may not impose *any surcharge above 15 percent that was imposed before July 1, 2014*, unless the PSC finds that the surcharge is necessary for repayment of that portion of bonds issued by the municipality to finance the facilities used to serve the unincorporated area; and
- Effective July 1, 2024, a municipality may not impose *any surcharge* unless the PSC finds that the surcharge is necessary for repayment of that portion of bonds issued by the municipality to finance the facilities used to serve the unincorporated area.

In each case, the PSC must determine the appropriate rate and duration of the surcharge (subject to the 25 percent cap) necessary to accomplish bond repayment.

In addition, the bill provides that a municipal water or sewer service customer who receives service in an unincorporated area may petition the PSC to review the rates and charges of the municipality. The PSC must accept the petition and determine whether the rates and charges are just and equitable. This provision may be interpreted to grant the PSC full ratemaking authority over these utilities when a rate review is sought by a customer.

A recent informal survey of municipalities in Florida indicates that 137 municipalities provide water and/or wastewater service to customers outside of their municipal boundaries. These customers may be located in unincorporated areas of counties or in other municipalities. The bill would require the PSC to oversee, to the extent noted above, the rates and charges of these 137 municipal water and wastewater utilities.

B. SECTION DIRECTORY:

Section 1. Provides a short title for the act.

Section 2. Amends s. 153.03, F.S., related to the power of counties to provide water and sewer services.

Section 3. Amends s. 180.02, F.S., related to the power of municipalities to provide public works.

Section 4. Amends s. 180.181, F.S., related to limitations on municipal rates charged to consumers outside city limits.

Section 5. Amends s. 367.022, F.S., related to exemptions to regulation by the Public Service Commission.

Section 6. Amends s. 367.071, F.S., related to the sale, assignment, or transfer of certificates of authorization, facilities, or control.

Section 7. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. Municipalities subjected to Public Service Commission (PSC) oversight under the bill may be required to pay regulatory assessment fees to the PSC. To the extent that payment of such fees is required, these fees likely will be credited to the Florida Public Service Regulatory Trust Fund which is used by the PSC in the performance of its functions and duties.

2. Expenditures:

The PSC will incur additional costs to implement the provisions of the bill that require it to review and approve municipal acquisitions of utility facilities in unincorporated areas, to review rate differentials between customers within and outside the municipal boundaries, to review and approve surcharges imposed on customers in unincorporated areas, and to review rates at the request of a customer in an unincorporated area.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Individual municipalities that provide water and wastewater service outside of their municipal boundaries may experience a reduction in revenues as a result of changes to rates or surcharges required by the PSC under the bill. A municipality that currently charges rates to customers outside its municipal boundaries that are more than 25 percent greater than the rates charged to customers within its municipal boundaries will experience a reduction in revenues. A municipality may offset these revenue impacts by restructuring its rates.

2. Expenditures:

A municipality that provides water and wastewater service outside of its municipal boundaries and charges any rate differential for such service will incur regulatory costs associated with required rate and surcharge filings made to the PSC. A municipality may avoid these costs by restructuring its rates. A municipality that acquires the facilities of a utility that serves customers in the unincorporated areas of a county will incur regulatory costs associated with PSC review of the acquisition. Municipalities and counties may incur costs associated with the bill's requirement that a county consent to the application or extension of municipal powers to provide public works in unincorporated areas of a county, which appears to include existing public works.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The PSC indicated that it is unable to provide a reliable estimate of its costs to implement the bill without a precise accounting of how many water and sewer systems it may be required to oversee. According to the PSC, it currently regulates approximately 150 investor-owned water and wastewater

companies. A recent informal survey of municipalities in Florida indicates that 137 municipalities provide water and/or wastewater service to customers outside of their municipal boundaries.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the authority of municipalities to raise revenues by limiting the overall rate differential that a municipality may charge for water and sewer services provided to customers outside the municipal boundaries and by limiting the application of surcharges for municipal water and sewer services provided to such customers. Sufficient information is not currently available to demonstrate whether the bill qualifies for an exemption based on its fiscal impact. The bill does not appear to qualify for any other exemption or exception. In sum, it appears that the bill must have a 2/3 vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES