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H 791 : Municipal Water & Sewer Utilities

H 791 GENERAL BILL by Heyman (Identical s 0370)

Municipal Water & Sewer Utilities; eliminates limitations on utility rates charged outside municipal boundaries in certain municipalities in home rule charter counties. Amends 180.191. EFFECTIVE DATE: 04/22/1998.

02/25/97 HOUSE Prefiled

03/04/97 HOUSE Introduced -HJ 00093

03/11/97 HOUSE Referred to Community Affairs (GRC); Utilities & Communications (EIC) -HJ 00239

03/31/97 HOUSE On Committee agenda-- Community Affairs (GRC), 04/04/97, 10:00 am, Morris Hall

04/02/97 HOUSE Withdrawn from Community Affairs (GRC); Utilities & Communications (EIC) -HJ 00378; Filed and not referred -HJ 00378

04/11/97 HOUSE Referred to Community Affairs (GRC); Utilities & Communications (EIC) -HJ 00524

04/14/97 HOUSE On Committee agenda-- Community Affairs (GRC), 04/15/97, 8:00 am, Morris Hall

04/15/97 HOUSE Comm. Action: Unanimously Favorable by Community Affairs (GRC) -HJ 00666

04/18/97 HOUSE Now in Utilities & Communications (EIC) -HJ 00666

05/02/97 HOUSE Carried over to 1998 Session pursuant to House Rule 96, In House Committee on Utilities & Communications (EIC)

10/07/97 HOUSE On Committee agenda-- Utilities & Communications (EIC), 10/07/97, 9:00 am, Reed Hall; Comm. Action:-Unanimously Favorable by Utilities & Communications (EIC); Pending Consent Calendar

03/03/98 HOUSE CARRIED OVER; Referred to Utilities & Communications (EIC); On Committee agenda-- Utilities & Communications (EIC), 10/07/97, 9:00 am, Reed Hall; Comm. Action:-Unanimously Favorable by Utilities & Communications (EIC); Pending Consent Calendar

03/05/98 HOUSE Available for Consent Calendar

03/17/98 HOUSE Placed on Consent Calendar; Read second and third times -HJ 00199; Passed; YEAS 117 NAYS 0 -HJ 00199

03/18/98 SENATE In Messages

03/19/98 SENATE Received, referred to Community Affairs; Regulated Industries -SJ 00231

04/02/98 SENATE Withdrawn from Community Affairs; Regulated Industries -SJ 00369; Substituted for SB 370 -SJ 00369; Read second time -SJ 00369

04/08/98 SENATE Read third time -SJ 00390; Passed; YEAS 37 NAYS 0 -SJ 00390; Immediately certified -SJ 00390

04/08/98 HOUSE Ordered enrolled -HJ 00493

04/14/98 Signed by Officers and presented to Governor -HJ 00596

04/22/98 Became Law without Governor's Signature; Chapter No. 98-15 -HJ 00964

STORAGE NAME: h0791z.uc
DATE: May 11, 1998

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND COMMUNICATIONS
FINAL FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 791
RELATING TO: Municipal Water and Sewer Utilities
SPONSOR(S): Representative Heyman
COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 6 NAYS 0
- (2) UTILITIES & COMMUNICATIONS YEAS 13 NAYS 0
- (3)
- (4)
- (5)

I. FINAL ACTION STATUS:

On March 17, 1998, the bill was favorably passed by the House and placed in messages. It passed the Senate on April 8, 1998 and was ordered enrolled. The bill became law without the Governor's signature on April 22, 1998. Chapter Number 98-15.

II. SUMMARY:

This bill repeals the current exceptions from the specific limitation on fees and surcharges that a municipal water and sewer utility located in an home rule charter county may charge consumers outside the city limits.

The bill would authorize the municipal utilities located in home rule charter counties to add a surcharge on the fees of consumers outside the city limits, subject to the fee and surcharge limitations of this section.

This act shall take effect upon becoming law.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

In 1970, the Legislature adopted chapter 70-997, Laws of Florida, which established a limitation on the ability of municipally owned electric, water, sewer, and gas utilities to set rates and surcharges on consumers located outside the municipality's boundaries. This limitation applied to municipally owned electric or gas utilities and municipally owned water and sewer utilities within the confines of a single county

These provisions were codified at section 172.081 and section 180.191, Florida Statutes. The Division of Statutory Revision codified the parts of the act dealing with municipal electric and gas operations in section 172.081 and municipal water and sewer operations in section 180.191. Section 172.081, Florida Statutes, was subsequently repealed by chapter 73-129, Laws of Florida. The provisions regulating the rates, fees, and charges for municipal water and sewer utilities did not apply to home rule charter counties that had an agency regulating water and sewer systems.

In 1988, the Legislature adopted chapter 88-301, Laws of Florida, amending section 180.191, Florida Statutes, relating to municipally owned water and sewer utilities operating within home rule counties. That amendment gave municipal utilities the authority to operate under the rate limitations and restrictions of general law rather than under county regulation yet continued the restriction from the operation of this section for home rule counties that had in operation an agency regulating water and sewer systems.

In 1992, the Legislature adopted chapter 92-181, Laws of Florida, which further amended section 180.191, Florida Statutes. That amendment to section 180.191, Florida Statutes, expanded the exemption of municipal water and sewer utilities operating outside municipal boundaries from county regulation and, allowed a municipally owned utility to operate in more than a single county pursuant to an interlocal agreement. Any municipality operating a municipally owned water and sewer utility and providing water and sewer service outside the municipal boundaries would be eligible for and could specifically exercise the exemption from county rate regulation as provided in section 180.191(5)(b), Florida Statutes, and must charge consumers outside the boundaries the same just and equitable rates, fees, and charges as consumers inside the municipal boundaries.

Currently, subsection 180.191(5)(b), Florida Statutes, as amended, provides:

(b) the provisions of this section shall be applicable within a county that was regulating water and sewer rates on or before May 1, 1988 with respect to any municipality operating. . .outside the boundaries of the municipality, provided that:

- 1 The municipality was providing water and sewer service to any consumers outside its municipal boundaries before May 1, 1988.
2. The governing body of the municipality adopts an ordinance, under the authority of this section, modifying the current water and sewer system rate structure. . . as may be necessary to bring the method of rate determination into

compliance with the provisions of this subsection and declaring the municipality's exemption. . .

3. The municipality remains in compliance with this subsection.

Additionally, section 180.191(1), Florida Statutes, provides that any municipality, which operates water or sewer utilities outside of its boundaries, but not in a home rule charter county, could determine rates, fees, and charges in one of the following manners:

(a) The same rates, fees and charges as consumers inside the municipal boundaries; provided, in addition thereto, the municipality may add a surcharge of not more than 25% of such rates, fees and charges to consumers outside the boundaries. Fixing of such rates, fees and charges shall not require a public hearing except a may be provided for service to consumers inside the municipality.

(b) Rates, fees and charges that are just and equitable and which are based on the same factors used in fixing the rates, fees and charges for consumers inside the municipal boundary. In addition thereto, the municipality may add a surcharge not to exceed 25% of such rates, fees and charges for said services to consumers outside the boundaries; provided that the total of these charges to non-municipal consumers was no more than 50% in excess of municipality consumers. Rates established in this manner would not be fixed without a public hearing.

B. EFFECT OF PROPOSED CHANGES:

This bill would repeal the current exemption from the specific limitation on fees and surcharges that a municipal water and sewer utility operating in an home rule charter county may charge consumers outside the city limits.

This bill would authorize the previously exempted municipal utilities to add a surcharge on the fees of consumers outside the city limits, subject to the fee and surcharge limitations of section 180.191(1), Florida Statutes.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A.

(3) any entitlement to a government service or benefit?

N/A.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes. Municipal utilities previously exempted from the operation of this section will be authorized to impose surcharges on the fees of consumers outside the city limits, subject to the fee and surcharge limitations of this section.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

Yes, see "2.b." above.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

- (4) Are families required to participate in a program?

N/A.

- (5) Are families penalized for not participating in a program?

N/A.

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A.

- (2) service providers?

N/A.

- (3) government employees/agencies?

N/A.

D. STATUTE(S) AFFECTED:

Section 180.191, Florida Statutes

E. SECTION-BY-SECTION RESEARCH:

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

There may be a recurring increase in revenue for municipal water and sewer utilities operating in home rule charter counties.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR.

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the expenditure of funds by counties or municipalities.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the revenue-raising authority of counties and municipalities.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of state tax shared with counties and municipalities.

VI. COMMENTS:

According to the City Manager of North Miami Beach, the City of North Miami Beach Municipal Utility is the only utility exempted by this section. Additionally, due to its exempt status, the utility is unable to recoup costs associated with service to consumers located outside the city limits

On October 7, 1997, the Committee on Utilities and Communications unanimously passed HB 791.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VIII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Legislative Research Director:

Tonya Sue Chavis, Esq.

Jenny Underwood Dietzel

FINAL RESEARCH PREPARED BY COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

Wendy G. Holt

Patrick L. "Booter" Imhof

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

- ▶ *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.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate
