

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 19, 1998 Revised: \_\_\_\_\_

Subject: Brevard County/Water Utility Surcharge

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Matthews</u>	<u>Guthrie</u>	<u>RI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>RC</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

This bill amends chapter 94-442, Laws of Florida, as amended by chapter 95-499, Laws of Florida. It reorganizes the Brevard County water utility surcharge law and clarifies the limits on and procedural requirements for imposing certain distribution differential surcharge rates by a potable water utility upon consumers outside municipal boundaries.

**II. Present Situation:**

Under general law, a municipal owned or operated water or sewer utility may, under certain conditions, impose a maximum 25% surcharge on rates, fees, and charges assessed consumers outside its municipal boundaries (*see s. 180.191, F.S.*). The municipal utility is limited to imposing on outside consumers 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 rates charged to consumers within its boundaries, plus a maximum surcharge of 25% in which case a public hearing is required. 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.

Municipal water or sewer utilities in Brevard County operate under a local law that provides more specific procedural requirements for imposing surcharges (ch. 94-442, L.O.F., as amended by ch. 95-499, L.O.F.). The local law originally mandated that each of the municipal suppliers in

Brevard County conduct an initial rate study on the surcharge by November, 1994. Brevard County has four municipal water utility providers: 1) the City of Cocoa, 2) the City of Melbourne, 3) the City of Titusville, and 4) Brevard County. Only the City of Melbourne conducted an initial rate study.

In particular, the local law provides that a water utility supplier operating in Brevard County may impose surcharges on outside consumers not to exceed 10% without meeting any special requirements. However, any surcharge greater than 10% (but not greater than 25%) must be justified through a rate study and public hearing and may include only those expenses directly attributable to the cost of delivering water to the outside area. The rate study is performed by a consultant, who is selected by the supplier from a field of three recommended by an advisory group. The 3-member advisory group consists of:

- ▶ a representative of the supplier municipality,
- ▶ a county commissioner from the affected area, and
- ▶ a representative of municipalities in the affected area, or alternatively, an appointed citizen from the unincorporated area when the proposed surcharge only affects an unincorporated area.

The supplier must submit the proposed scope of work for the rate study to each county commissioner and each affected municipality at least 30 days before contracting with the consultant. If such county commissioners or affected municipalities submit written comments to the supplier at least two weeks before approval of the contract, the supplier must respond in writing at least 48 hours before approving the contract. After the consultant's findings are released, the governing body of the supplier municipality must hold a public hearing within 14 days.

Surcharges by supplier municipalities of 26% or more are subject to the provisions in s. 180.191, F.S.

### **III. Effect of Proposed Changes:**

The bill amends ch. 94-442, L.O.F., as amended by ch. 95-499, L.O.F. It revises legislative intent, eliminates language requiring an initial distribution differential rate study to be conducted by all water utility suppliers in Brevard County by November 1994, and clarifies specific procedural requirements that municipal water or sewer utilities in Brevard County must meet to surcharge the rates, fees and charges of customers who reside outside the city limits of the supplier municipality.

Specifically, the bill:

- ▶ clarifies that a municipal supplier may impose a surcharge up to 10% on consumers who live outside municipal boundaries without meeting any special requirements, that any surcharge

greater than 10% (but not greater than 25%) must be justified through a rate study and public hearing and may include only those expenses directly attributable to the cost of delivering water to the outside area, and that any surcharge greater than 25 percent is subject to the provisions of s. 180.191, F.S.

- ▶ clarifies the procedure and methodology for contracting and conducting rate studies and adds that these studies be conducted in accordance with guidelines set forth in s. 367.081(2)(a), F.S., and Rule 25-30.433, F.A.C., relating to ratesetting;
- ▶ clarifies that the advisory group has only three members;
- ▶ provides that when a proposed surcharge affects both unincorporated and municipal territory, the county commission may appoint to the advisory group a citizen from the unincorporated area (in lieu of the county commissioner), and when a proposed surcharge affects only an unincorporated area, the county commission may appoint a citizen from the unincorporated area (in lieu of the representative selected by a user municipality);
- ▶ adds new language that, in cases when a surcharge exceeding 10% is proposed, the supplier must convene a meeting of the advisory group by providing at least 30 days written notice to the board of county commissioners and to each affected municipality. The notice shall provide the date, time and place of meeting, identify the geographical area to be studied, and state the requirement to generate the list of consultants. If the county or an affected municipality fails to send an authorized representative to the meeting, it forfeits its right to participate.
- ▶ extends from 14 days to 60 days the time frame within which the governing body of the supplier municipality must hold a public hearing regarding the consultant's findings in the rate study.

The bill provides an effective date upon becoming law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

Notice of the bill was published in January 1998, as required by s. 11.02, F.S., and Art. III, s. 10, Fla. Const. The Brevard County Delegation unanimously approved the bill after holding a public hearing on November 18, 1997.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.