

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1954  
 SPONSOR: Senator Constantine  
 SUBJECT: Intergovernmental Programs  
 DATE: February 23, 2002      REVISED: 02/26/02 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/2 amendments</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

The bill prohibits a legal entity created under the Florida Interlocal Cooperation Act from providing certain water and wastewater services to populations located outside the territorial limits of the municipalities or counties that participate in the legal entity.

This bill amends s. 163.01 of the Florida Statutes.

**II. Present Situation:**

**Florida Interlocal Cooperation Act of 1969** - Generally, the Florida Interlocal Cooperation Act of 1969<sup>1</sup> allows several local governments to exercise jointly their powers for the purpose of funding capital improvements and infrastructure, including the ability to issue bonds for the purpose of financing or refinancing capital projects.

Section 163.01(7)(g), F.S., allows any separate legal entity created under the act, the membership of which is limited to municipalities and counties to:

...acquire, own, construct, improve, operate, and manage public facilities relating to a governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside of the member of the entity.

The separate legal entity created to provide such water and/or wastewater services is exempt from the jurisdiction of the Public Service Commission (PSC).

<sup>1</sup> Section 163.01, F.S., et seq.

The legal entity is also vested with the power to:

- Finance or refinance the acquisition, construction, expansion, and improvement of the facility through the issuance of bonds;
- Establish rates, if provided by the interlocal agreement, levy special assessments, sell all or a portion of its facility, and contract with a public or private entity to manage its facilities;
- Issue bond anticipation notes in connection with the issuance of bonds;
- Except as limited by the interlocal agreement, exercise county powers under s. 125.01, F.S., and municipal powers under s. 166.021, F.S.

The legal entity, however, is prohibited from:

- Exercising the power of eminent domain over the facilities or property of any existing water or wastewater plant utility system;
- Providing utility service within the service area of an existing utility system unless it receives the permission of the utility.

**Counties** - Section 153.03(1), F.S., authorizes counties to purchase and/or construct a water supply system or sewage disposal system, or both,

Within such county and any adjoining county or counties and to purchase and/or construct water system improvements or sewer improvements , or both, *within such county and any adjoining county or counties* and to operate, manage and control all such systems so purchased ...and to furnish and supply water and sewage collection and disposal services to any of such counties and to any municipalities and any persons, firms or corporations, public or private, in any of such counties...

Counties, however, are prohibited from constructing or operating facilities on property located within a municipality unless the facilities were owned by the county prior to being incorporated or annexed into a municipality. Counties are prohibited from providing water and wastewater service to any municipality without the express consent of the governing body of the municipality.

**Municipalities** - Pursuant to s. 180.19(1), F.S., any municipality may permit any other municipality and the owners of lands outside of its corporate limits or within the limits of any other municipality to connect with the facilities constructed and operated by the municipality under the authority of ch. 180, F.S.

**Water and Wastewater Rate Regulation** - Chapter 367, F.S., regulates the rates private water and/or wastewater utilities charge their customers. Section 367.022(2), F.S., exempts systems owned, operated, managed or controlled by governmental authorities and nonprofit corporations formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility. A governmental authority is defined, by s. 367.021(7), F.S., to mean a political subdivision, a regional water supply authority created pursuant to s. 373.1962, F.S., or a nonprofit corporation formed for the purposes of acting on behalf of a political subdivision with respect to a water and wastewater facility.

Pursuant to s. 367.171(3), F.S., 37 counties are not subject to the PSC for water and wastewater systems located within the county until such time as the county declares by resolution that chapter 367 applies to the county. A county, after 10 continuous years under the jurisdiction of the PSC, may by resolution or ordinance rescind any prior action imposing PSC regulation on the county.

Section 367.171(7), F.S., provides that the Public Service Commission has exclusive jurisdiction over all utility systems whose service crosses county boundaries, whether or not the counties involved are jurisdictional or nonjurisdictional, except for utility systems that remain subject to interlocal utility agreements in effect as of January 1, 1991, that create a single governmental authority to regulate the utility systems that cross county boundaries.

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

The bill would prohibit a legal entity created under s. 163.01(7)(g), F.S., from providing water and wastewater utility service outside the territorial limits of the local governments to service to populations that are not within the geographical boundaries of the local government or governments that formed the legal entity, even if these populations are not being served by an existing utility system.

The bill is effective upon becoming a law.

### **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:**

Under existing law, a legal entity created by s. 163.01(7), F.S., for the purpose of providing water or wastewater facilities may not provide utility services within the service area of an existing utility system. Under the language of the bill, the legal entity would not be able to service populations outside of the territorial limits of the

municipalities or counties that are party to the interlocal agreement, even if these populations are not being served by any existing utility system. Because of this limitation, private utilities might have more opportunity to provide new service in a new territory.

**C. Government Sector Impact:**

The bill restricts the ability of legal entities created by interlocal agreement between one or more municipalities or counties, from offering water and wastewater utility service constructed or operated under the agreement to populations outside the territorial limits of the members of the legal entity.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Governmental Oversight and Productivity:

Clarifies that electrical utilities are not included in the bill.

#2 by Governmental Oversight and Productivity:

Creates a “grandfather” clause; facilities owned prior to the effective date of the age by a separate legal entity created under the paragraph are exempt.

#1 by Comprehensive Planning, Local and Military Affairs:

Qualifies the prohibition against an entity created under s. 163.01(7)(g)1., F.S., providing water and wastewater service to populations outside of the jurisdiction of a member of the Interlocal Agreement, to allow the entity to provide service outside the jurisdiction of the members if the governing body of the county or municipality where service is to be provided grants the entity permission to provide service within the boundaries of that county or municipality. (WITH TITLE AMENDMENT)