HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 963 Florida Interlocal Cooperation Act of 1969
SPONSOR(S): Russell
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 140, SB 998

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Energy (Sub)		Holt	Liepshutz
2) Business Regulation			
3) Commerce & Local Affairs Appropriations			
4) Appropriations			
5)			

SUMMARY ANALYSIS

The bill adds new requirements for a separate legal entity (entity) created pursuant to s. 163.01(g)(7), F.S. The bill would require an entity that is seeking to acquire a utility that is outside the entity members' boundaries to notify in writing each "host government" of the potential transaction prior to any transfer of ownership. Within 45 days of the notice, the host government may adopt a membership resolution indicating its intent to become a member of the entity, it may prohibit that acquisition of the facility by the entity, or it may approve the acquisition and prescribe restrictions on the proposed acquisition, or it can take no action.

The bill further requires the entity to accept the host government as a member of the entity if it adopts a membership resolution. A host government may reserve the right to review and approve the rates, charges, and customer classifications within the host government's jurisdiction. The host government's rate review is subject to compliance with the entity's bond coverage requirements.

The bill appears to have an indeterminate fiscal impact.

The bill shall take effect upon becoming a law and shall apply retroactively to September 1, 2002.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/Ax[]
3. Expand individual freedom?	Yes[x]	No[]	N/A[]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

The Florida Interlocal Cooperation Act of 1969 authorizes local governments to enter into interlocal agreements that allow these governmental entities to act more efficiently with regard to services and facilities. In 1997, s. 163.01, F.S., was amended to allow municipalities and counties to form a "separate legal entity" in order to:

> acquire, own, construct, improve, operate, and manage public facilities, or finance facilities on behalf of any person, 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 members of the entity.[1]

The statute that allows for the formation of a Governmental Utility Authority (GUA) is s. 163.01(7)(g)1., F.S. The legislation was passed during the 1997 session, and was a part of a large water policy bill that mostly pertained to Chapter 403 and implemented the 1996 amendment to the Federal Safe Drinking Water Act. The House Bill 1323, Chapter 97-236, Laws of Florida, became law without the Governor's signature on May 30, 1997.

Water and wastewater utilities that are owned and operated by governmental entities created pursuant to s. 163.01(7(g), F.S., are specifically exempt from regulation by the Florida Public Service Commission (FPSC). As such an entity, it is self-regulated and has sole authority over rates, terms, and conditions of service.

Pursuant to chapter 367, F.S., counties and municipalities that own water utilities are responsible for the rates and terms of service offered to customers. The only limitation on the jurisdiction of these local governments is when municipally owned utilities serve customers outside of their territorial boundaries. For customers residing outside the territorial limits, local governments may assess surcharges of up to 50% of the rates, fees, and charges. Under s. 367.171, F.S., any local county government has the option to provide economic regulation of the privately owned water and wastewater utilities operating in its county, or to cede jurisdiction of these utilities over to the FPSC. Section 367.171(7), F.S., provides

> 7) Notwithstanding anything in this section to the contrary, the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional, except for utility systems that are subject to, and remain subject to, interlocal utility agreements in effect as of January 1, 1991, that create a

[1] Ch. 97-236, L.O.F., codified as amended at s. 163.01, F.S.

single governmental authority to regulate the utility systems whose service transverses county boundaries, provided that no such interlocal agreement shall divest commission jurisdiction over such systems, any portion of which provides service within a county that is subject to commission jurisdiction under this section.

However, s. 367.071(4)(a), F.S., states that the sale of water or wastewater facilities shall be approved, as a matter of right, by the FPSC.

At the direction of the Joint Legislative Auditing Committee, the Office of Program Policy Analysis (OPPAGA) conducted a review of the Florida Governmental Utility Authority (FGUA), an intergovernmental authority or separate legal entity consisting of Citrus, Nassau, and Polk counties and created for the purpose of acquiring, financing, and operating water utilities. OPPAGA's review of water utilities owned by an intergovernmental authority focused on the following issues:

- The specific purpose of intergovernmental authorities as well as any public benefit derived therefrom; and
- Whether intergovernmental authorities are sufficiently accountable to the public and customers;
- Whether it would be sound public policy for the commission to have jurisdiction over an intergovernmental authority's services and rates; and
- Alternative courses of action that would improve the accountability, efficiency, and economy of intergovernmental authorities.

OPPAGA's review of FGUA was prompted in part by its negotiations with Florida Water Services Corporation, a private entity with 156 utilities in 25 counties. Florida Water Services announced in September, 2002 that it would sell its utility systems to the Florida Water Services Authority, a separate legal entity comprised of the towns of Gulf Breeze and Milton, Florida. Numerous lawsuits were filed over the proposed acquisition and the FPSC asserted jurisdiction to review whether the sale is in the public interest. The FPSC issued an order requiring Florida Water Services to file an application for approval of its proposed transfer to Florida Water Services Authority. Following issuance of the order, the FPSC sought and received temporary injunctive relief to delay the proposed sale pending its further review. The First District Court of Appeal refused to overturn the FPSC's order delaying the sale. The intergovernmental authority, Florida Water Services Authority, announced its intention to finance and close the sale even if contrary to the FPSC's order. On March 7, 2003 in an order from the Second Judicial Circuit, the temporary injunction was continued. Subsequently, Florida Water Services Corporation announced it would not sell its utility systems to the intergovernmental authority.

Based on its review, OPPAGA recommended amending s. 163.01(7)(g)1., F.S., as follows to ensure that an intergovernmental authority is sufficiently accountable to the public and its customers:

- Require the affirmative consent of the county or municipality where the majority of customers reside to be obtained as a condition of acquisition of a water utility by an intergovernmental authority. The requirement to obtain approval as a condition of purchase will provide greater accountability in these utility acquisitions because affected customers would be assured representation through their local government.
- Authorize commission involvement over the rates and terms of service offered by a utility when agreement cannot be reached. The ability to request commission involvement in disputes over the rates and terms of service offered by a utility should be provided to any county with customers served by an intergovernmental authority. To ensure public participation, the administrative rulemaking process should be used to structure the process and determine the fee for dispute resolution services.
- Ensure that the county or municipality where the majority of customers reside is able to subsequently acquire utilities owned by an intergovernmental authority. In those instances when the authority and the county or municipality cannot agree on the terms and conditions of the

acquisition, the applicable local government should be provided the right to redress through the commission. As with rates and terms of service disputes, the costs assessed to local governments should reflect the amount required to recover all associated costs, with the specific structure determined through the administrative rulemaking process.

The bill requires a separate legal entity that is seeking to acquire a utility that is outside the entity members' boundaries to notify in writing, each "host government" of the potential transaction prior to any transfer of ownership, use, or possession of any utility assets. The notice must be provided to the legislative head of the host government and its chief administrative officer. Options of action are provided to the host government and are to occur within 45 days of the notice. A host government may adopt a membership resolution indicating its intent to become a member of the entity; it may adopt a prohibition resolution to prohibit the acquisition of the utility within its jurisdiction, an approval resolution would prescribe any restrictions on the proposed acquisition. Lastly, a host government can take no action.. In the event of a membership resolution, the entity shall accept the host government as a member prior to any transfer of ownership. A prohibition resolution conveys that an entity may not acquire the public facilities within that host government boundaries without specific consent by further resolution.

The bill defines a host government as the governing body of the county if a majority of the retail utility customers to be served by the acquired public facilities within the county reside in the unincorporated area, or is the governing body of a municipality if the majority of the retail utility customers to be served by the acquired public facilities reside within the municipal boundaries.

The bill reserves a right for the host government to review and approve the rates, charges and customer classifications within the host government's jurisdiction. However the host government's review is subject to compliance with the entity's bond coverage requirements.

The bill makes its provisions retroactive to any separate legal entity acquisition subsequent to September 1, 2002.

The act shall take effect upon becoming a law and shall apply retroactively to September 1, 2002.

C. SECTION DIRECTORY:

Section 1. Adds new requirements for separate legal entities created pursuant to s. 163.01(g(7), F.S.
Section 2. Makes the new requirements retroactive to any separate legal entity acquisition subsequent to September 1, 2002.
Section 3. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

There is an indeterminate element associated with the costs for those host governments that wish to purchase their own public utilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES