

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 691 State Oversight of Utility Services Provided By Intergovernmental Authorities  
**SPONSOR(S):** Energy & Utilities Policy Committee and Hudson  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 1192

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Energy &amp; Utilities Policy Committee</u>	<u>20 Y, 0 N, As CS</u>	<u>Keating</u>	<u>Collins</u>
2)	<u>Military &amp; Local Affairs Policy Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>General Government Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u>Full Appropriations Council on General Government &amp; Health Care</u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

Section 163.01(7)(g), F.S., authorizes the formation of intergovernmental authorities for the purpose of acquiring, owning, improving, and operating public facilities, including wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside the member governments' boundaries. An intergovernmental authority is created by interlocal agreement as a separate legal entity, the membership of which may consist of two or more special districts, municipalities, or counties of the state. An intergovernmental authority is legally separate and apart from its member governments and is not subject to Public Service Commission (PSC) jurisdiction.

CS/HB 691 eliminates the exemption from Public Service Commission (PSC) jurisdiction for intergovernmental authorities created by interlocal agreement under s. 163.01(7)(g), F.S., that provide retail water or wastewater service to the public, including those whose service transverses county boundaries. The bill specifically provides that such intergovernmental authorities are "utilities" subject to the PSC's authority. The bill exempts systems owned or operated by an intergovernmental authority for the first 48 months after the authority obtains ownership or control.

The bill specifies that an intergovernmental authority is not required to pay an application fee when it files an application with the PSC, as a buyer, assignee, or transferee, for approval of a proposed sale, assignment, or transfer. The bill further specifies that an intergovernmental authority is not liable for the regulatory assessment fees owed to the PSC by a utility over which it takes ownership or control. The bill also makes conforming changes to cross-references.

The bill does not appear to have a significant fiscal impact on state or local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives:

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Adopted in 1997, section 163.01(7)(g), F.S., authorizes the formation of intergovernmental authorities for the purpose of acquiring, owning, improving, and operating public facilities, including wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside the member governments' boundaries.<sup>1</sup> An intergovernmental authority is created by interlocal agreement as a separate legal entity, the membership of which may consist of two or more special districts, municipalities, or counties of the state. An intergovernmental authority is legally separate and apart from its member governments and is not subject to Public Service Commission (PSC) jurisdiction.<sup>2</sup>

The law was amended in 2004 to require an intergovernmental authority, prior to acquiring a utility system, to notify the governing body the local government in which the largest number of the utility's customers is located. This "host government" is provided the opportunity to adopt a resolution to become a member of the authority, adopt a resolution to approve the acquisition, or adopt a resolution to prohibit the acquisition if it finds that the proposed acquisition is not in the public interest (in which case it may include conditions that would make the proposal acceptable). If the host government adopts a membership resolution, the authority must accept the host government as a member on the same basis as existing members before any transfer of the utility.<sup>3</sup>

Pursuant to section 163.01(7)(g), F.S., the Florida Governmental Utility Authority (FGUA) was formed in 1999 via an interlocal agreement between Brevard, Lee, Polk, and Sarasota counties to acquire, own, improve, operate, and maintain water and wastewater facilities.<sup>4</sup> According to FGUA, it has acquired more than 50 water and wastewater utility systems from the private sector and transferred these systems to public ownership since its inception. Currently, FGUA owns and operates systems in Lee, Collier, and Pasco counties.<sup>5</sup> FGUA acquired the systems in Lee and Collier counties in 2003 and 1999, respectively. It acquired systems in Pasco County in February 2009.

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<sup>1</sup> Chapter 97-236, L.O.F., amending s. 163.01, F.S.

<sup>2</sup> Section 163.01(7)(g), F.S.

<sup>3</sup> Section 163.01(7)(g)3-4.

<sup>4</sup> <http://www.fgua.com/contents/AboutUs.asp>

<sup>5</sup> <http://www.fgua.com/contents/Systems.asp>

Another water utility authority, the Okeechobee Utility Authority, was formed by interlocal agreement in 1994, prior to the adoption of section 163.01(7)(g), F.S. Other water and wastewater utility authorities and special districts have been established by special law or referendum.<sup>6</sup>

In Florida, several entities are responsible for regulating water quality, water supply, and rates and service for water and wastewater utilities. The Department of Environmental Protection has primary responsibility for regulating the quality and supply of water. With respect to rates and service, the specific regulatory entities vary. For privately-owned utilities operating within a single county, the county has the option to regulate rates and service or allow the PSC to regulate those utilities.<sup>7</sup> The PSC currently has jurisdiction over privately-owned water and wastewater utilities in 35 of the 67 counties in Florida. Regardless of whether the county has opted to regulate privately-owned utilities, the PSC has jurisdiction over all water and wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.<sup>8</sup> Government-owned utilities, including regional water supply authorities, are exempt from PSC jurisdiction.<sup>9</sup>

### **Effect of Proposed Changes**

The bill eliminates the exemption from Public Service Commission jurisdiction for intergovernmental authorities created by interlocal agreement under s. 163.01(7)(g), F.S., that provide retail water or wastewater service to the public, including those whose service transverses county boundaries. The bill specifically provides that such intergovernmental authorities are “utilities” subject to the PSC’s authority. The bill exempts systems owned or operated by an intergovernmental authority for the first 48 months after the authority obtains ownership or control.

The bill specifies that an intergovernmental authority is not required to pay an application fee when it files an application, as a buyer, assignee, or transferee, for approval of a proposed sale, assignment, or transfer. The bill further specifies that an intergovernmental authority is not liable for the regulatory assessment fees owed by a utility over which it takes ownership or control.

An intergovernmental authority subject to regulation by the PSC in the same manner as private water and wastewater utilities would be required to obtain a certificate of authorization to provide water or wastewater service and to request approval of its rates and charges and other service tariffs. It would also be required to submit annual reports and regulatory assessment fees to the PSC. The PSC would maintain continuing jurisdiction over the authority’s rates and service. Any sale or transfer of a system owned by the authority would require PSC approval.

The two systems owned by FGUA in Lee and Collier counties were acquired more than 48 months ago. Thus, under the bill, these two systems would immediately become subject to regulation by the PSC. The recently acquired systems in Pasco County would become subject to regulation by the PSC in 2013 unless they are transferred from FGUA prior to that time. The other existing water and wastewater utility authorities in Florida may not be affected by the bill because each was created by interlocal agreement prior to the adoption of section 163.01(7)(g), F.S.

The bill amends cross-references in ss. 288.0655 and 624.105, F.S., to conform to the bill.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 163.01(7)(g), F.S., relating to the creation of intergovernmental authorities by interlocal agreement for the purpose of acquiring, owning, improving, and operating public facilities, including wastewater facilities, water or alternative water supply facilities, and water reuse facilities.

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<sup>6</sup> Information concerning the creation and status of intergovernmental authorities for water and wastewater service and regional water supply was provided by FGUA.

<sup>7</sup> Section 367.171, F.S.

<sup>8</sup> Section 367.171, F.S.

<sup>9</sup> Section 367.022, F.S.

**Section 2.** Amends s. 288.0655(2)(b), F.S., relating to the rural infrastructure fund to conform a cross-reference.

**Section 3.** Amends s. 367.021, F.S., revising the definitions of “governmental authority” and “utility” and to add a definition for “intergovernmental authority.”

**Section 4.** Amends s. 367.022, F.S., relating to exemptions from PSC jurisdiction.

**Section 5.** Amends s. 367.071(3), F.S., relating to fees required for the sale, assignment, or transfer of certificates of authorization, facilities, or control.

**Section 6.** Amends s. 367.145(1)(a), F.S., relating regulatory assessment and application fees.

**Section 7.** Amends s. 367.171(7), F.S., relating to the effectiveness of Chapter 367, F.S.

**Section 8.** Amends s. 624.105, F.S., relating to waiver of customer liability to conform a cross-reference.

**Section 9.** Provides an effective date of July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The Public Service Commission would receive filing fees associated with applications for certification and applications for rate proceedings filed by an intergovernmental authority that becomes subject to PSC jurisdiction. The PSC would also receive regulatory assessment fees in the amount of 4.5% of the gross operating revenues of an intergovernmental authority that becomes subject to PSC jurisdiction.

#### **2. Expenditures:**

The PSC estimates that recurring costs associated with the review of annual reports and the processing of rate proceedings for intergovernmental authorities that become subject to PSC jurisdiction would require one additional FTE.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

Revenues to local governments that are members of an intergovernmental authority that becomes subject to the PSC jurisdiction may be impacted indirectly by any change in revenues to the authority that results from the PSC’s ratemaking process.

#### **2. Expenditures:**

Local governments that are members of an intergovernmental authority that becomes subject to PSC jurisdiction may be impacted indirectly by costs associated with PSC filing fees and regulatory assessment fees, as well as costs of attorneys, consultants, or other experts to prepare PSC filings and respond to PSC audits and other inquires.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On March 6, 2009, the Energy & Utilities Policy Committee adopted two amendments to the bill and reported the bill favorably as a committee substitute. The amendments:

- Limited the definition of intergovernmental authorities subject to PSC jurisdiction to those that provide retail water or wastewater service to the public.
- Removed a potential limitation to the PSC's existing jurisdiction under s. 367.171(7), F.S.