

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1583 w/CS Relating to Water and Wastewater Utilities

SPONSOR(S): Goodlette

TIED BILLS:

IDEN./SIM. BILLS: SB 2668, SB 372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation</u>	<u>36 Y, 0 N</u>	<u>Holt</u>	<u>Liepshutz</u>
2) <u>Natural Resources</u>	<u>16 Y, 0 N w/CS</u>	<u>Perkins</u>	<u>Lotspeich</u>
3) <u>Transportation & Econ. Dev. Apps. (Sub)</u>	<u>14 Y, 0 N</u>	<u>Darity</u>	<u>Hawkins</u>
4) <u>Appropriations</u>	<u>37 Y, 0 N w/CS</u>	<u>Hawkins</u>	<u>Baker</u>
5) _____	_____	_____	_____

SUMMARY ANALYSIS

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 the provision of 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 and operate water and wastewater utilities. These separate legal entities are not subject to the jurisdiction of the Florida Public Service Commission (PSC). However, s. 367.071(4)(a), states that the sale of waste or wastewater facilities shall be approved, as a matter of right, by the PSC.

HB 1583 w/CS substantially amends the method by which a separate legal entity created under the Florida Interlocal Cooperation Act may acquire a water or wastewater utility. The bill adds special district to the membership of any separate legal entity created under s. 163.01, F.S., in addition to a municipality or county or both. Definitions are provided for implementation of the changes.

Intergovernmental entities seeking to acquire a utility must meet certain notice requirements. The adoption of a prohibition resolution by the host government relating to the acquisition of a utility must be announced within a specified timeframe. A "host government" is defined as either the city or the county government whichever has the largest number of equivalent residential connections served by the utility. The bill codifies existing law regarding what happens to any gains or losses in the purchase of a privately-owned utility by specifying that any loss in future revenues must be borne by the shareholders of the utility. This provision applies to all transactions prior to and after the effective date of the section.

Requires large regulated water and wastewater utilities to pay regulatory assessment fees to PSC semi-annually rather than annually, while smaller water and wastewater utilities with annual revenues of less than \$200,000 will continue to pay regulatory assessment fees annually.

There is an indeterminate fiscal effect on local government.

This act takes effect upon becoming law and shall apply to all contracts pending on that date.

This analysis has been revised to reflect the strike-all amendment adopted by the Appropriations Committee on April 20, 2004.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME:

h1583g.ap

DATE:

April 21, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

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 the provision of 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 and operate water and wastewater utilities. The first such entity created was the Florida Governmental Utility Authority (FGUA). The FGUA was created on February 1, 1999, and bought six water utilities from a private company on April 15, 1999. In September, 2001, it began negotiations with another private company, Florida Water Services Corporation (FWSC), to buy that company’s utilities. The FWSC owns 156 utilities in 25 counties, serving over 500,000 customers. Most of the utilities are small, having fewer than 3,300 customers.

After approximately a year of negotiations with the FGUA, the FWSC 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 PSC asserted jurisdiction to review whether the sale was in the public interest. The PSC issued an order requiring FWSC to file an application for approval of its proposed transfer to Florida Water Services Authority. Following issuance of the order, the PSC sought and received temporary injunctive relief to delay the proposed sale pending further review by the PSC. The First District Court of Appeal refused to overturn the commission’s order delaying the sale. The Florida Water Services Authority announced its intention to finance and close the sale even if contrary to the PSC’s order. On March 7, 2003, in an order from the Circuit Court of the Second Judicial Circuit, the temporary injunction was continued. Subsequently, FWSC announced it would not sell its utility systems to the Florida Water Services Authority.

During these negotiations, the Legislature became concerned about the proposed sale and the Joint Legislative Auditing Committee directed the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) to conduct a review of the separate legal entities or intergovernmental authorities created under s. 163.01(7)(g), F.S. The review was to focus on the following issues:

- Specific purpose of intergovernmental authorities as well as any public benefit derived there from;
- Whether intergovernmental authorities are sufficiently accountable to the public and customers;

- Whether it would be sound public policy for the PSC 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 found that economic regulation of water utilities is fragmented, with utilities owned by private companies regulated by either the PSC or the county in which the utility is located, and utilities owned by counties, municipalities, and intergovernmental authorities self-regulated.

OPPAGA found that intergovernmental authority ownership of water utilities may achieve financial benefits as the authority may be able to better meet capital expenditure needs and to realize operating efficiencies. Government entities and intergovernmental authorities can reduce the cost of financing capital improvements by issuing tax-exempt bonds. They also may be exempt from certain state and local taxes and may be eligible for some federal and state fund programs, which private utilities would not be.

Intergovernmental authorities are an effective way to consolidate the operations of small utilities, for example centralized billing and customer service, which can achieve efficiencies and economies of scale not available to those small utilities. These consolidation benefits can result in lower prices, which can then be spread over a larger customer base, and in improved services.

However, OPPAGA also found several possible disadvantages. Most customers of utilities not owned by an intergovernmental authority are assured oversight and representation by some means; customers of privately-owned utilities have representation through the regulatory process of either the PSC or the county and customers of a government-owned utility that reside within the boundaries of that government have representation through their elected local government. In contrast, intergovernmental-authority-owned utilities are self-regulated and may own utilities outside their governmental boundaries, so there is a question as to whether the interests of customers residing outside the territorial limits of the local governments forming the intergovernmental authority will be fairly represented. Even customers represented by a member government may not be sufficiently protected as current statutes do not require that member governments approve changes in rates or services.

Another potential problem is that local governments may not be able to acquire a utility owned by an intergovernmental authority. The statutes allow local governments to acquire privately-owned utilities through negotiated purchase or eminent domain. This can assist in long-term growth planning and in assuring accountability to customers. It is uncertain that a local government could exercise eminent domain power over property owned by an intergovernmental authority.

Additionally, the intergovernmental authority may not realize the efficiency and economy of scale cost savings, or even if it does, it is not clear those savings would be passed on to customers. Finally, the state and local governments may lose some tax revenues as a result of the acquisition.

Based on these findings, OPPAGA recommended the following amendments to s. 163.01(7)(g), F.S.:

- An intergovernmental authority seeking to acquire a water utility should be required to obtain the affirmative consent of the county or municipality where the majority of customers reside as a condition of the acquisition. Should the relevant county or municipality not approve the acquisition, that specific acquisition would be removed from the proposed acquisition agreement. This would help assure representation of customers through their local government. It would also give the local governments some leverage in the negotiations of purchase price and sale terms and in assuring that benefits of intergovernmental ownership are passed on to customers.
- A process should be created under which, when customers do not agree with the rates and terms of service provided by an intergovernmental authority, they may request their local

government to petition the PSC for arbitration services. The PSC would be required to develop and promulgate rules to govern the process and to determine the fee for dispute resolution services.

- Similarly, a process should be created under which a county or municipality that is seeking to acquire a utility from an intergovernmental authority and unable to come to terms with that intergovernmental authority may petition the PSC for "redress," presumably facilitation of the negotiated purchase. Again the PSC would be required to promulgate rules governing the process and to determine the fee for services.

PROPOSED CHANGES

Section 1. Amends s. 163.01(7)(g)1, F.S., to include in the membership of any separate legal entity a special district, in addition to a municipality, or county, or both. This section also provides the following definitions in the bill:

- a. "Host government" means either the governing body of the county, if the largest number of equivalent residential connections currently served by a system of the utility is located in the unincorporated area, or the governing body of a municipality, if the largest number of equivalent residential connections currently served by a system of the utility is located within that municipality's boundaries.
- b. "Separate legal entity" means any entity created by interlocal agreement the membership of which is limited to two or more special districts, municipalities or counties of the state, but which entity is legally separate and apart from any of its member governments.
- c. "System" means a water or wastewater facility or group of such facilities owned by one entity or affiliate entities.
- d. "Utility" means a water or wastewater utility and includes every person, separate legal entity, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide, water or wastewater service to the public for compensation.

Initial Acquisition of a Utility by a Chapter 163, F.S., Separate Legal Entity:

A separate legal entity seeking to acquire a utility must notice the host government in writing by certified mail not less than 30 days before the proposed transfer of ownership, use, or possession of any utility assets by the separate legal entity. Included in the notice must be the name and address of a contact person for the separate legal entity and information identified in s. 367.071(4)(a), F.S., relating to sale, assignment, or transfer of certificate of authorization, facilities, or control (e.g. the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction).

Within 30 days of receipt of the notice, the host government may: (1) adopt a resolution to become a member; (2) adopt a resolution to approve the acquisition; (3) adopt a resolution to prohibit the acquisition but include comments that would make the proposal acceptable. If the host government adopts a resolution to become a member, the legal entity must accept membership on the same basis as existing members before the transfer. If the host government adopts a resolution to approve the acquisition, the separate legal entity may complete the acquisition. If the host government adopts a resolution to prohibit the acquisition by the separate legal entity, the entity may not acquire the utility without specific consent of the host government by future resolution. If the host government takes no action, membership, approval, or prohibition, the separate legal entity may acquire the utility after a 30-day notice period.

After the acquisition or construction of any utility systems by a separate legal entity revenues or any other income may not be transferred or paid to a member of a separate legal entity, or to any other special district, county or municipality, from user fees or other charges or revenues generated from customers that are not physically located within the jurisdictional or service delivery boundaries of the member, special district, county, or municipality receiving the transfer or payment. Any transfer or payment to a member, special district, or other local government must be solely from user fees or other charges or revenues generated from customers that are physically located within the jurisdictional or service delivery boundaries of the member, special district, or local government receiving the transfer or payment.

Provides that s. 163.01(7)(g), F.S., is an alternative provision otherwise provided by law as authorized in s. 4, Art. VIII of the State Constitution for any transfer of power as a result of an acquisition of a utility by a separate legal entity from a municipality, county, or special district.

Section 2. Creates s. 367.0813, F.S., to address gains or losses on the sale or condemnation by a governmental authority of a utility's assets. Gains and losses that result in the loss of customers served by those assets and the associated revenue stream shall be born by the shareholders of the utility.

Section 3. Provides a severability clause in the event any provision of this act or its application is found invalid. The invalidity does not affect other provisions or applications of the act.

Section 4. Section 367.145(1), F.S., is amended to allow the PSC to set by rule the requirement that large water and wastewater utilities semi-annually pay regulatory assessment fees, and small utilities, with annual revenues of less than \$200,000, annually pay regulatory assessment fees.

Section 5. This act shall take effect upon becoming law and shall apply to all contracts pending on or after that date.

C. SECTION DIRECTORY:

See above section by section Effect of Proposed Changes.

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:

There is an indeterminate fiscal effect on local government.

2. Expenditures:

There is an indeterminate fiscal effect on local government.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 25, 2004, the Committee on Natural Resources favorably adopted 2 amendments to HB 1583:

- Amendment No. 1 – deletes section 2 of the bill relating to section 120.52, F.S.
- Amendment No. 2 – provides a new section 7 to the bill relating to section 367.145, F.S.

On April 2, 2004, the Transportation and Economic Development Appropriations Subcommittee recommended a strike-all amendment to HB 1583 w/CS. The strike all amendment made the following changes to HB1583 w/CS.

- Requires the separate legal entity to notice when an interlocal entity wants to operate within the host government's territory.
- Requires that the separate legal entity must accept the membership of a host government.
- Allows the host government to prohibit or oppose the interlocal's service in their territory and provides the process when the prohibition is announced.
- Clarifies that transfers or payments to specified entities must be solely from certain fees and revenue generated from customers that are physically located within specific jurisdictional or service delivery boundaries.
- Codifies existing law regarding gains or losses in the purchase of a privately-owned utility.
- Requires large water and wastewater utilities to pay regulatory assessments fees semiannually and requires small utilities with revenues less than \$200,000 to pay annually.

On April 20, 2004, the Committee on Appropriations adopted the strike-all amendment to HB 1583 w/CS as recommended by the Transportation and Economic Development Appropriations Subcommittee with no changes. This analysis has been revised to reflect the strike-all amendment.