

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Energy & Utilities
 2 Subcommittee
 3 Representative Santiago offered the following:

Amendment (with title amendment)

Between lines 107 and 108, insert:

Section 4. Subsections (7) through (10) are added to
 section 367.071, Florida Statutes, to read:

367.071 Sale, assignment, or transfer of certificate of
 authorization, facilities, or control.-

(7) Local government's right of first refusal. -

(a) No person, firm, corporation, partnership, association,
or any other non-governmental entity of any kind owning a water
or wastewater utility in this state may sell any such water or
wastewater utility without first notifying the governing body of
the local government in which the majority of its equivalent
residential connections served by the utility are located and

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18 offering such local government the right to purchase the
19 utility.

20 (b) A non-governmental owner of a water or wastewater
21 utility desiring to sell its franchise, water system or
22 wastewater system, or facilities located in this state that has
23 received a bona fide offer or acceptance from any potential
24 buyer which is satisfactory to the owner shall notify the local
25 government of the offer or acceptance stating the price, terms,
26 and conditions of sale and provide a copy of the proposed
27 contract of sale together with all exhibits, within 10 days of
28 the receipt of the offer or acceptance.

29 (c) After notification of a bona fide offer or acceptance
30 pursuant to paragraph (b), the local government shall have the
31 right to purchase the franchise, water system or wastewater
32 system or facilities that are the subject of the offer or
33 acceptance at the price, terms and conditions of the bona fide
34 offer or acceptance by executing a contract with the owner
35 within 45 days, unless agreed to otherwise, from the date of
36 receipt of the notice of the offer or acceptance. If the local
37 government fails to execute a contract with the owner within
38 such 45-day period, and the owner does not alter or amend the
39 terms of the bona fide offer or acceptance in negotiating a sale
40 to the local government, or the local government does not adopt
41 a resolution transferring its right of first refusal to a
42 governmental authority created pursuant to chapter 163, then the
43 owner has no further obligations under this subsection.

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44 (d) The local government shall have until the later of the
45 closing date set forth in the bona fide offer or acceptance or
46 120 days from the local government's execution of a contract
47 pursuant to paragraph (c) to close the transaction. The contract
48 between the owner and the local government shall be freely
49 assignable by the local government.

50 (e) If the local government does not exercise the right of
51 first refusal granted by this subsection and the owner
52 thereafter offers the franchise, utility, water system or
53 wastewater system on different terms or at a price lower than
54 the price specified in the notice to the local government, the
55 owner shall so notify the local government and provide copies of
56 the proposed contract of sale containing the revised terms and
57 conditions together with all exhibits to the local government
58 within 10 days of the receipt of the received offer. The local
59 government shall have an additional 30 days from the date of the
60 receipt of the notice of the received offer to meet the revised
61 price, terms and conditions by executing the proposed contract.

62 (f) A local government that receives notice of a bona fide
63 offer or acceptance pursuant to paragraph (b) may, by resolution
64 of the governing body of such local government, authorize a
65 governmental authority created by interlocal agreement pursuant
66 to chapter 163 to exercise the local government's right of first
67 refusal granted by this subsection. If the local government
68 adopts a resolution transferring its right of first refusal to a
69 governmental authority, the authority shall be required to act

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70 within the time periods specified in this subsection as if the
71 date of the resolution of the local government was the date of
72 notice of the bona fide offer or acceptance.

73 (8) Exceptions to a local government's right of first
74 refusal. - Notwithstanding the provisions of subsection (7), a
75 local government shall not have a right of first refusal under
76 the following circumstances:

77 (a) Any sale or transfer to a person who would be included
78 within the table of descent and distribution if the owner were
79 to die intestate.

80 (b) Any transfer by gift, devise, or operation of law.

81 (c) Any transfer by a partnership to any of its partners.

82 (d) Any conveyance of an interest in a water or wastewater
83 utility's facilities incidental to the financing of capital
84 improvements.

85 (e) A conveyance resulting from the foreclosure of a
86 mortgage, deed of trust, or other instrument encumbering a water
87 or wastewater utility or any deed given in lieu of such
88 foreclosure.

89 (f) Any sale or transfer between or among joint tenants or
90 tenants in common owning a water or wastewater utility.

91 (g) Any purchase of a water or wastewater utility by a
92 governmental authority.

93 (9) Applicability of right of first refusal to multi-
94 jurisdictional utilities and stock purchases. - In the event a
95 person, firm, corporation, partnership, association, or any

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96 other non-governmental entity of any kind owning a water or
97 wastewater utility in this state desires to sell to a non-
98 governmental entity a water or wastewater utility located within
99 a local government together with a utility located outside of
100 the same local government, the purchase price to be paid by the
101 local government shall be the price set forth in the contract of
102 sale for such portion of the water or wastewater utility located
103 within the local government. In the absence of an allocation of
104 purchase price in the contract of sale between a utility located
105 in the local government and one located in another local
106 government, the purchase price set forth in the contract of sale
107 shall be allocated by dividing the purchase price by the number
108 of equivalent residential connections currently serviced by the
109 systems to be sold and multiplying the quotient by the number of
110 equivalent residential connections located within the local
111 government. In the event of a proposed stock purchase, the local
112 government shall have the right to purchase the water or
113 wastewater utility located within the local government at a
114 price equal to the purchase price allocation method for a multi-
115 jurisdictional sale plus an allocation of the outstanding debt
116 of the utility. The portion of the outstanding debt to be
117 allocated to the water or wastewater utility to be purchased by
118 the local government shall be determined in the same manner as
119 the purchase price allocation. For the purpose of the
120 allocations required by this subsection, an equivalent
121 residential connection for a water utility shall equal 350

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122 gallons per day, and an equivalent residential connection for a
123 wastewater utility shall equal 280 gallons per day. Together
124 with the notice required in subsection (7), the utility shall
125 provide the local government with the data necessary to
126 determine equivalent residential connections for the purposes of
127 this subsection. The owner of the water or wastewater utility
128 may identify an alternative method for allocating the purchase
129 price to that portion of the utility located within the local
130 government. The local government has sole discretion in
131 determining the acceptability of the owner's alternative method
132 of allocation.

133 (10) Notwithstanding the provisions of s. 367.171,
134 subsections (7) through (9) shall be effective in all counties
135 of this state.

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T I T L E A M E N D M E N T

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Remove line 14 and insert:

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up to a specified cost; amending s. 367.071, F.S.; establishing

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a right of first refusal for a local government to purchase a

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non-governmental water or wastewater utility offered for sale

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when the majority of the equivalent residential connections

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served by the utility are located within the local government;

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148 establishing procedures related to the exercise of the local
149 government's right of first refusal; providing exceptions to the
150 local government's right of first refusal; providing for
151 applicability of the right of first refusal to multi-
152 jurisdictional utilities and stock purchases; providing that the
153 right of first refusal applies in all counties; amending s.
154 367.081, F.S.;