1 A bill to be entitled 2 An act relating to water and wastewater utility systems; amending ss. 125.3401, 153.90, 153.91, 3 153.92, 153.93, 153.94, 180.301, 189.423, and 4 5 190.0125, F.S.; authorizing counties, 6 municipalities, special districts, and 7 community development districts to enter into 8 water facility privatization contracts; 9 providing legislative findings and declaration; 10 providing definitions; providing responsibility of such entities to set user fees; providing 11 requirements and conditions for such contracts; 12 exempting such contracts from the requirements 13 of ch. 287, F.S.; amending s. 367.022, F.S.; 14 15 exempting facilities operated under a privatization contract from regulation by the 16 17 Public Service Commission; reenacting s. 18 367.171(8), F.S.; relating to county regulation 19 of utility rates, to incorporate the amendment to s. 367.022, F.S., in a reference; providing 20 21 an effective date. 22 23 Be It Enacted by the Legislature of the State of Florida: 24 Section 1. Section 125.3401, Florida Statutes, is 25 26 amended to read: 27 125.3401 Purchase, sale, or privatization of water, 28 sewer, or wastewater reuse utility by county.--29 (1) No county may purchase or sell a water, sewer, or

wastewater reuse utility that provides service to the public

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privatization contract for <a href="either">either</a> a <a href="water">water</a> or a wastewater</a> facility, until the governing body of the county has held a public hearing on the purchase, sale, or <a href="water">water</a> or <a href="water"

- $\underline{(a)}(1)$  The most recent available income and expense statement for the utility;
- $\underline{\text{(b)}(2)}$  The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;
- $\underline{(c)}$  (3) A statement of the existing rate base of the utility for regulatory purposes;
- $\underline{(d)}$  (4) The physical condition of the utility facilities being purchased, sold, or subject to a <u>water or</u> wastewater facility privatization contract;
- $\underline{\text{(e)}(5)}$  The reasonableness of the purchase, <u>sale</u> sales, or <u>water or</u> wastewater facility privatization contract price and terms;
- $\underline{\text{(f)}(6)}$  The  $\underline{\text{impact}}$  impacts of the purchase, sale, or  $\underline{\text{water or}}$  wastewater facility privatization contract on utility customers, both positive and negative;
- $\underline{(g)1.(7)(a)}$  Any additional investment required and the ability and willingness of the purchaser, or the private firm under a water or wastewater facility privatization contract, to make that investment, whether the purchaser is the county or the entity purchasing the utility from the county; and

2.(b) In the case of a <u>water or</u> wastewater facility privatization contract, the terms and conditions on which the private firm will provide capital investment and financing or a combination thereof for contemplated capital replacements, additions, expansions, and repairs. The county shall give significant weight to this criteria:

 $\underline{\text{(h)}(8)}$  The alternatives to the purchase, sale, or water or wastewater facility privatization contract, and the potential impact on utility customers if the purchase, sale, or water or wastewater facility privatization contract is not made; and

<u>(i)(9)(a)</u> The ability of the purchaser or the private firm under a <u>water or</u> wastewater facility privatization contract to provide and maintain high-quality and cost-effective utility service, whether the purchaser is the county or the entity purchasing the utility from the county.

(b) In the case of a <u>water or</u> wastewater facility privatization contract, the county shall give significant weight to the technical expertise and experience of the private firm in carrying out the obligations specified in the <u>water or</u> wastewater facility privatization contract.

(2) The county shall prepare a statement showing that the purchase, sale, or water or wastewater facility privatization contract is in the public interest, including a summary of the purchaser's or private firm's experience in water, sewer, or and wastewater reuse utility operation and a showing of financial ability to provide the service, irrespective of whether the purchaser or seller private firm is the county or the transaction involves a water or wastewater facility privatization contract entity purchasing the utility from the county.

(3)(10) All moneys paid by a private firm to a county pursuant to a water or wastewater facility privatization contract shall be used for the purpose of reducing or offsetting property taxes, water or wastewater service rates, or debt reduction or making infrastructure improvements or capital asset expenditures or other public purpose; provided, however, nothing herein shall preclude the county from using all or part of the moneys for the purpose of the county's qualification for relief from the repayment of federal grant awards associated with the water or wastewater system as may be required by federal law or regulation.

Section 2. Section 153.90, Florida Statutes, is amended to read:

153.90 Legislative findings and declarations.--

- (1) The Legislature hereby finds and declares as follows:
- (a) That providing modern, efficient water and wastewater facilities is vital to the health and general welfare of the citizens of the state;
- (b) That the construction, rehabilitation, operation, and maintenance of <u>water and</u> wastewater facilities <u>is</u> <del>are</del> essential to economic growth and development in the state;
- (c) That protection of taxpayers requires that water and wastewater services be provided on an economical basis consistent with service and safety standards;
- (d) That alternative methods of financing the construction, operation, and improvement of <u>water and</u> wastewater facilities must be developed and encouraged;
- (e) That although public entities currently have broad home rule powers and other statutory authority to enter into certain types of privatization agreements, the ability of

public entities to provide efficient <u>water and</u> wastewater facilities will be enhanced by specifically authorizing public entities to enter into long-term privatization contracts for the performance of <u>water and</u> wastewater facility functions by private firms;

- (f) That water and wastewater facility privatization contracts will allow private firms to utilize their expertise, experience, and resources to enable public entities to provide modern, efficient water and wastewater services while protecting the rights and interests of citizens; and
- (g) That Executive Order No. 12803 provides relief to public entities from repayment of federal grant awards where the public entity enters into a <u>water or</u> wastewater facility privatization contract consistent with the requirements of this act and existing law, and public entities should be encouraged to take advantage of that relief.
- (2) The Legislature therefore determines that it is in the public interest of the state to supplement and enhance the authority of public entities to solicit, negotiate, and enter into contracts with private entities for the financing, designing, acquisition, ownership, leasing, construction, improvement, operation, maintenance, and administration, or any combination thereof, of water and wastewater facilities.
- (3) It is the intent of the Legislature that the provisions of this act be liberally construed in order to accomplish their purposes and that the provisions of this act shall be in addition and supplemental to powers conferred by any other law.

Section 3. Section 153.91, Florida Statutes, is amended to read:

153.91 Definitions.--As used in this act, the term:

 $\underline{(1)(2)}$  "Interlocal agreement" means an agreement entered into pursuant to s. 163.01 by two or more public entities in respect to a <u>water or</u> wastewater facility privatization contract.

(2)(4) "Private firm" means any privately or publicly held business entity qualified to do business in Florida having the financial capacity and technical, administrative, and regulatory experience and expertise necessary to enable it to carry out the obligations specified in a <u>water or</u> wastewater facility privatization contract.

(3) "Public entity" means any political subdivision of this state which is authorized to provide <u>water or</u> wastewater service, including, but not limited to, <u>any</u> county, city, metropolitan or consolidated government, special district, and community development district.

 $\underline{(4)(5)}$  "Wastewater facility" means any equipment, building, or other property used or useful in connection with the provision of a wastewater service to the public, including such interests in land as are necessary or convenient to permit a private firm to perform a contract in respect thereto.

(5)(1) "Wastewater facility privatization contract" means a written agreement, or one or more related written agreements, between a private firm and one or more public entities, which provides for the operation, maintenance, repair, management, and administration, or any combination thereof, of a wastewater facility for a term of more than 5 years, but not more than 40 years in duration, and which may also provide for the planning, design, construction, improvement, acquisition, financing, ownership, sale, and

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leasing, or any combination thereof, of the wastewater facility.

- (6) "Water facility" means any equipment, building, or other property used or useful in connection with the provision of water service to the public, including such interests in land as are necessary or convenient to permit a private firm to perform a contract in respect thereto.
- (7) "Water facility privatization contract" means a written agreement, or one or more related written agreements, between a private firm and one or more public entities, which provides for the operation, maintenance, repair, management, and administration, or any combination thereof, of a water facility for a term of more than 5 years but not more than 40 years in duration, and which may also provide for the planning, design, construction, improvement, acquisition, financing, ownership, sale, and leasing, or any combination thereof, of the water facility.

Section 4. Section 153.92, Florida Statutes, is amended to read:

153.92 Clarifying the authority to enter into water or wastewater facility privatization contracts. -- Any public entity may enter into a water or wastewater facility privatization contract, and may join with one or more other public entities in such a contract pursuant to an interlocal agreement. A public entity entering into a water or wastewater facility privatization contract may make such conveyances of its property, and may make such other agreements and perform such other acts consistent with law, as are determined by the public entity to be necessary or convenient to effectuate the water or wastewater facility 31 privatization contract. It is the intent of the Legislature

that the language used in this section is intended to clarify the existing authority rather than provide any additional authority for public entities to enter into <u>water or</u> wastewater facility privatization contracts.

Section 5. Section 153.93, Florida Statutes, is amended to read:

153.93 Responsibility for setting user fees.—Responsibility for the setting of user fees charged to members of the public purchasing or using either water service of a water facility or a wastewater service of a wastewater facility, subject to either a water or a wastewater facility privatization contract; collection of such fees; and enforcement of fee obligations, regulations, and other requirements and obligations applicable to members of the public who purchase or use the water or wastewater service, shall remain obligations of the public entity.

Section 6. Section 153.94, Florida Statutes, is amended to read:

- 153.94 Applicability of other laws.--Except as expressly provided in this act:
- (1) With respect to any <u>water or</u> wastewater facility privatization contract entered into under this act, a public entity is subject to s. 125.3401, s. 180.301, s. 189.423, or s. 190.0125 but is not subject to the requirements of chapter 287.
- (2) A <u>water or</u> wastewater facility subject to a <u>water</u> <u>or</u> wastewater facility privatization contract made under this act shall continue to be regulated for all local, state, and federal purposes as if owned, operated, and maintained by the public entity.

1 Section 7. Section 180.301, Florida Statutes, is 2 amended to read: 180.301 Purchase, sale, or privatization of water, 3 4 sewer, or wastewater reuse utility by municipality .--5 (1) No municipality may purchase or sell a water, 6 sewer, or wastewater reuse utility that provides service to 7 the public for compensation, or enter into a water or 8 wastewater facility privatization contract for either a water or a wastewater facility until the governing body of the municipality has held a public hearing on the purchase, sale, 10 or water or wastewater facility privatization contract, and 11 12 made a determination that the purchase, sale, or water or 13 wastewater facility privatization contract is in the public 14 interest. In determining if the purchase, sale, or water or 15 wastewater facility privatization contract is in the public interest, the municipality shall consider, at a minimum, the 16 17 following: 18 (a)<del>(1)</del> The most recent available income and expense 19 statement for the utility; 20 (b) The most recent available balance sheet for the 21 utility, listing assets and liabilities and clearly showing 22 the amount of contributions-in-aid-of-construction and the 23 accumulated depreciation thereon; 24 (c) A statement of the existing rate base of the 25 utility for regulatory purposes; 26 (d) The physical condition of the utility 27 facilities being purchased, sold, or subject to a water or 28 wastewater facility privatization contract; 29 (e)(5) The reasonableness of the purchase, sale, or 30 water or wastewater facility privatization contract price and terms;

 $\underline{(g)1.(7)(a)}$  Any additional investment required and the ability and willingness of the purchaser, or the private firm under a water or wastewater facility privatization contract, to make that investment, whether the purchaser is the municipality or the entity purchasing the utility from the municipality; and

 $\underline{2.(b)}$  In the case of a <u>water or</u> wastewater facility privatization contract, the terms and conditions on which the private firm will provide capital investment and financing or a combination thereof for contemplated capital replacements, additions, expansions, and repairs. The municipality shall give significant weight to this criteria <del>criterion</del>.

 $\underline{\text{(h)}(8)}$  The alternatives to the purchase, sale, or water or wastewater facility privatization contract, and the potential impact on utility customers if the purchase, sale, or water or wastewater facility privatization contract is not made; and

 $\underline{(i)}(9)(a)$  The ability of the purchaser or the private firm under a <u>water or</u> wastewater facility privatization contract to provide and maintain high-quality and cost-effective utility service, whether the purchaser is the municipality or the entity purchasing the utility from the municipality.

(b) In the case of a <u>water or</u> wastewater facility privatization contract, the municipality shall give significant weight to the technical expertise and experience of the private firm in carrying out the obligation specified in the water or wastewater facility privatization contract.

(2) The municipality shall prepare a statement showing that the purchase, sale, or <u>water or</u> wastewater facility privatization contract is in the public interest, including a summary of the purchaser's or private firm's experience in water, sewer, or wastewater reuse utility operation and a showing of financial ability to provide the service, <u>irrespective of</u> whether the purchaser <u>or seller</u> is the municipality or the <u>transaction involves a water or wastewater facility privatization contract</u> entity purchasing the utility <u>from the municipality</u>.

(3)(10) All moneys paid by a private firm to a municipality pursuant to a water or wastewater facility privatization contract shall be used for the purpose of reducing or offsetting property taxes, water or wastewater service rates, or debt reduction or making infrastructure improvements or capital asset expenditures or other public purpose; provided, however, nothing herein shall preclude the municipality from using all or part of the moneys for the purpose of the municipality's qualification for relief from the repayment of federal grant awards associated with the water or wastewater system as may be required by federal law or regulation.

Section 8. Section 189.423, Florida Statutes, is amended to read:

189.423 Purchase, sale, or privatization of water, sewer, or wastewater reuse utility by special district.--

(1) No dependent or independent special district may purchase or sell a water, sewer, or wastewater reuse utility that provides service to the public for compensation, or enter into a water or wastewater facility privatization contract for either a water or a wastewater facility, until the governing

body of the district has held a public hearing on the purchase, sale, or <u>water or</u> wastewater facility privatization contract and made a determination that the purchase, sale, or <u>water or</u> wastewater facility privatization contract is in the public interest. In determining if the purchase, sale, or <u>water or</u> wastewater facility privatization contract is in the public interest, the district shall consider, at a minimum, the following:

 $\underline{(a)}(1)$  The most recent available income and expense statement for the utility;

 $\underline{\text{(b)}(2)}$  The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;

 $\underline{(c)}$  (3) A statement of the existing rate base of the utility for regulatory purposes;

 $\underline{(d)}$  (4) The physical condition of the utility facilities being purchased, sold, or subject to water or wastewater facility privatization contract;

 $\underline{\text{(e)}(5)}$  The reasonableness of the purchase, sale, or  $\underline{\text{water or}}$  wastewater facility privatization contract price and terms;

(f)(6) The impact impacts of the purchase, sale, or water or wastewater facility privatization contract on utility customers, both positive and negative;

 $\underline{(g)1.(7)(a)}$  Any additional investment required and the ability and willingness of the purchaser, or the private firm under a <u>water or</u> wastewater facility privatization contract, to make that investment, whether the purchaser is the special district or the entity purchasing the utility from the special district; and

 $\underline{2.(b)}$  In the case of a <u>water or</u> wastewater facility privatization contract, the terms and conditions on which the private firm will provide capital investment and financing or a combination thereof for contemplated capital replacements, additions, expansions, and repairs. The special district shall give significant weight to this criteria.

 $\underline{\text{(h)}(8)}$  The alternatives to the purchase, sale, or  $\underline{\text{water or}}$  wastewater facility privatization contract, and the potential impact on utility customers if the purchase, sale, or  $\underline{\text{water or}}$  wastewater facility privatization contract is not made; and

 $\underline{(i)}(9)(a)$  The ability of the purchaser or the private firm under a <u>water or</u> wastewater facility privatization contract to provide and maintain high-quality and cost-effective utility service, whether the purchaser is the special district or the entity purchasing the utility from the special district. $\div$ 

(b) In the case of a water or wastewater facility privatization contract, the special district shall give significant weight to the technical expertise and experience of the private firm in carrying out the obligations specified in the water or wastewater facility privatization contract.+

(2) The special district shall prepare a statement showing that the purchase, sale, or <u>water or</u> wastewater facility privatization contract is in the public interest, including a summary of the purchaser's or private firm's experience in water, sewer, or wastewater reuse utility operation and a showing of financial ability to provide the service, <u>irrespective of</u> whether the purchaser or <u>seller</u> <u>private firm</u> is the special district or the <u>transaction</u>

involves a water or wastewater facility privatization contract entity purchasing the utility from the special district. The provisions of this section shall not apply to community development districts established pursuant to chapter 190.

(3)(10) All moneys paid by a private firm to a special district pursuant to a water or wastewater facility privatization contract shall be used for the purpose of reducing or offsetting property taxes, water or wastewater service rates, or debt reduction or making infrastructure improvements or capital asset expenditures or other public purpose; provided, however, nothing herein shall preclude the special district from using all or part of the moneys for the purpose of the special district's qualification for relief from the repayment of federal grant awards associated with the water or wastewater system as may be required by federal law or regulation.

Section 9. Section 190.0125, Florida Statutes, is amended to read:

190.0125 Purchase, privatization, or sale of water, sewer, or wastewater reuse utility by district.--

(1) No community development district may purchase or sell a water, sewer, or wastewater reuse utility that provides service to the public for compensation, or enter into a water or wastewater facility privatization contract for either a water or a wastewater facility, until the governing body of the community development district has held a public hearing on the purchase, sale, or water or wastewater facility privatization contract and made a determination that the purchase, sale, or water or wastewater facility privatization contract is in the public interest. In determining if the purchase, sale, or water or wastewater facility privatization

contract is in the public interest, the community development district shall consider, at a minimum, the following:

(a) (1) The most recent available income and expense statement for the utility;

 $\underline{\text{(b)}(2)}$  The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;

 $\underline{(c)}$  (3) A statement of the existing rate base of the utility for regulatory purposes;

 $\underline{(d)}$  (4) The physical condition of the utility facilities being purchased, sold, or subject to a <u>water or</u> wastewater facility privatization contract;

 $\underline{\text{(e)}(5)}$  The reasonableness of the purchase, <u>sale</u> sales, or <u>water or</u> wastewater facility privatization contract price and terms;

 $\underline{\text{(f)}(6)}$  The  $\underline{\text{impact}}$  impacts of the purchase, sale, or  $\underline{\text{water or}}$  wastewater facility privatization contract on utility customers, both positive and negative;

 $\underline{(g)1.(7)(a)}$  Any additional investment required and the ability and willingness of the purchaser, or the private firm under a water or wastewater facility privatization contract, to make that investment, whether the purchaser is the community development district or the entity purchasing the utility from the community development district; and

2.(b) In the case of a <u>water or</u> wastewater facility privatization contract, the terms and conditions on which the private firm will provide capital investment and financing or a combination thereof for contemplated capital replacements, additions, expansions, and repairs. The community development district shall give significant weight to this criteria.

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29 30 water or wastewater facility privatization contract, and the potential impact on utility customers if the purchase, sale, or water or wastewater facility privatization contract is not made; and (i) $\frac{(9)(a)}{(9)(a)}$  The ability of the purchaser or the private

(h) The alternatives to the purchase, sale, or

firm under a water or wastewater facility privatization contract to provide and maintain high-quality and cost-effective utility service, whether the purchaser is the community development district or the entity purchasing the utility from the community development district. +

(b) In the case of a water or wastewater facility privatization contract, the community development district shall give significant weight to the technical expertise and experience of the private firm in carrying out the obligations specified in the water or wastewater facility privatization contract.; and

(2) The community development district shall prepare a statement showing that the purchase, sale, or water or wastewater facility privatization contract is in the public interest, including a summary of the purchaser's or private firm's experience in water, sewer, or wastewater reuse utility operation and a showing of financial ability to provide the service, irrespective of whether the purchaser or seller private firm is the community development district or the transaction involves a water or wastewater facility privatization contract entity purchasing the utility from the community development district.

(3) $\frac{(10)}{(10)}$  All moneys paid by a private firm to a community development district pursuant to a water or wastewater facility privatization contract shall be used for

the purpose of reducing or offsetting property taxes, water or wastewater service rates, or debt reduction or making infrastructure improvements or capital asset expenditures or other public purpose; provided, however, nothing herein shall preclude the community development district from using all or part of the moneys for the purpose of the community development district's qualification for relief from the repayment of federal grant awards associated with the water or wastewater system as may be required by federal law or regulation.

Section 10. Subsection (2) of section 367.022, Florida Statutes, is amended to read:

367.022 Exemptions.--The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

(2) Systems owned, operated, managed, or controlled by governmental authorities, including <u>water or</u> wastewater facilities operated by private firms under <u>water or</u> wastewater facility privatization contracts as defined in s. 153.91;

Section 11. For the purpose of incorporating the amendment to s. 367.022(2), Florida Statutes, in a reference thereto, subsection (8) of section 367.171, Florida Statutes, is reenacted to read:

367.171 Effectiveness of this chapter.--

(8) Each county which is excluded from the provisions of this chapter shall regulate the rates of all utilities in that county which would otherwise be subject to regulation by the commission pursuant to s. 367.081(1), (2), (3), and (6). The county shall not regulate the rates or charges of any system or facility which would otherwise be exempt from

commission regulation pursuant to s. 367.022(2). For this purpose the county or its agency shall proceed as though the county or agency is the commission. Section 12. This act shall take effect upon becoming a law. HOUSE SUMMARY Defines "water facility" and "water facility privatization contract" with respect to provisions regulating water and wastewater utility systems. Revises provisions which currently authorize counties, municipalities, special districts, and community development districts to enter into wastewater facility privatization contracts, to similarly authorize water facility privatization contracts. Conforms requirements and conditions for water facility privatization contracts and responsibilities of the public entities entering into such contracts. Provides an exemption from regulation by the Public Service Commission for water facilities operated by a private firm under a privatization operated by a private firm under a privatization contract.