



CHAMBER ACTION

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The Committee on Local Government & Veterans' Affairs recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Interlocal Cooperation Act of 1969; amending s. 163.01, F.S.; providing procedures for the approval of the transfer of powers between local governments and a legal entity for the acquisition of water or wastewater facilities serving residents outside the jurisdiction of the members of the legal entity; providing for alternative compliance with s. 4, Art. VIII of the State Constitution; declaring a legal entity a government authority under certain circumstances; requiring a county to reserve the power to review and approve rates under certain circumstances; prohibiting a legal entity from receiving income generated from customers under certain circumstances; granting a county the right to acquire facilities of a legal entity serving residents outside the jurisdiction of the members of the legal entity under certain circumstances; providing for retroactive application; amending s. 367.081, F.S.;



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29 | prohibiting the consideration by the Public Service
30 | Commission of certain gains or losses when establishing
31 | utility rates; providing an effective date.
32 |

33 | Be It Enacted by the Legislature of the State of Florida:
34 |

35 | Section 1. Paragraph (g) of subsection (7) of section
36 | 163.01, Florida Statutes, is amended to read:

37 | 163.01 Florida Interlocal Cooperation Act of 1969.--

38 | (7)

39 | (g)1. Notwithstanding any other provisions of this
40 | section, any separate legal entity created under this section,
41 | the membership of which is limited to municipalities and
42 | counties of the state, may acquire, own, construct, improve,
43 | operate, and manage public facilities, or finance facilities on
44 | behalf of any person, relating to a governmental function or
45 | purpose, including, but not limited to, wastewater facilities,
46 | water or alternative water supply facilities, and water reuse
47 | facilities, which may serve populations within or outside of the
48 | members of the entity. Notwithstanding s. 367.171(7), any
49 | separate legal entity created under this paragraph is not
50 | subject to commission jurisdiction and may not provide utility
51 | services within the service area of an existing utility system
52 | unless it has received the consent of the utility. A separate
53 | legal entity, other than a water supply authority created
54 | pursuant to ss. 373.1962 and 373.1963, which seeks to acquire
55 | any public facilities that serve populations outside of the
56 | jurisdiction of members of the entity must notify in writing



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57 | each host government of the contemplated acquisition prior to
58 | any transfer of ownership, use, or possession of any utility
59 | assets to such separate legal entity. The potential acquisition
60 | notice must be provided in writing to the legislative head of
61 | the governing body of the host government and its chief
62 | administrative officer and provide the name and address of a
63 | contact person of the separate legal entity for the receipt of
64 | information on the contemplated acquisition. Within 45 days
65 | following receipt of the notice, the host government may adopt a
66 | membership resolution indicating its intent to become a member
67 | of the separate legal entity, a prohibition resolution to
68 | prohibit the acquisition by the separate legal entity of public
69 | facilities within its jurisdiction, an approval resolution
70 | prescribing any restrictions on the proposed acquisition
71 | required by the host local government, or take no action of any
72 | kind. If a host government adopts a membership resolution, the
73 | separate legal entity shall accept the host government as a
74 | member prior to any transfer of ownership, use, or possession of
75 | the public facilities on the same basis as its existing members.
76 | If a host government adopts a prohibition resolution, the
77 | separate legal entity may not acquire the public facilities
78 | within such host government's territory without specific consent
79 | of the host government by future resolution. For purposes of
80 | this paragraph, a "host government" is the governing body of the
81 | county if a majority of the retail utility customers to be
82 | served by the acquired public facilities within the county
83 | reside in the unincorporated area or is the governing body of a
84 | municipality if the majority of the retail utility customers to



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85 be served by the acquired public facilities reside within the
86 municipal boundaries. A host government shall, in its adoption
87 of an approval resolution or a membership resolution or by a
88 resolution adopted subsequent to the closing of an acquisition,
89 reserve the right to review and approve as fair and reasonable
90 the rates, charges, and customer classifications adopted by the
91 separate legal entity for the use of the acquired public
92 facilities within the jurisdiction of the host local government.
93 Such right of rate review and approval by the host local
94 government is subject to the obligation of the separate legal
95 entity to establish rates and charges that comply with the
96 requirements contained in any resolution or trust agreement
97 relating to the issuance of bonds to acquire and improve the
98 affected public facilities and such right does not affect the
99 obligation of the separate legal entity to set rates at a level
100 sufficient to pay debt service on its obligations issued in
101 relation to the affected public facilities. A separate legal
102 entity created under this section shall be a governmental
103 authority for purposes of chapter 367. This paragraph is an
104 alternative provision otherwise provided by law as authorized in
105 s. 4, Art. VIII of the State Constitution for any transfer of
106 power as a result of an acquisition of public facilities by a
107 separate legal entity from a municipality, county, or special
108 district. The entity may finance or refinance the acquisition,
109 construction, expansion, and improvement of such facilities
110 relating to a governmental function or purpose through the
111 issuance of its bonds, notes, or other obligations under this
112 section or as otherwise authorized by law. The entity has all



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113 the powers provided by the interlocal agreement under which it
114 is created or which are necessary to finance, own, operate, or
115 manage the public facility, including, without limitation, the
116 power to establish rates, charges, and fees for products or
117 services provided by it, the power to levy special assessments,
118 the power to sell or finance all or a portion of such facility,
119 and the power to contract with a public or private entity to
120 manage and operate such facilities or to provide or receive
121 facilities, services, or products. Except as may be limited by
122 the interlocal agreement under which the entity is created, all
123 of the privileges, benefits, powers, and terms of s. 125.01,
124 relating to counties, and s. 166.021, relating to
125 municipalities, are fully applicable to the entity. However,
126 neither the entity nor any of its members on behalf of the
127 entity may exercise the power of eminent domain over the
128 facilities or property of any existing water or wastewater plant
129 utility system, nor may the entity acquire title to any water or
130 wastewater plant utility facilities, other facilities, or
131 property which was acquired by the use of eminent domain after
132 the effective date of this act. Bonds, notes, and other
133 obligations issued by the entity are issued on behalf of the
134 public agencies that are members of the entity.

135 2. Any entity created under this section may also issue
136 bond anticipation notes in connection with the authorization,
137 issuance, and sale of bonds. The bonds may be issued as serial
138 bonds or as term bonds or both. Any entity may issue capital
139 appreciation bonds or variable rate bonds. Any bonds, notes, or
140 other obligations must be authorized by resolution of the



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141 governing body of the entity and bear the date or dates; mature
142 at the time or times, not exceeding 40 years from their
143 respective dates; bear interest at the rate or rates; be payable
144 at the time or times; be in the denomination; be in the form;
145 carry the registration privileges; be executed in the manner; be
146 payable from the sources and in the medium or payment and at the
147 place; and be subject to the terms of redemption, including
148 redemption prior to maturity, as the resolution may provide. If
149 any officer whose signature, or a facsimile of whose signature,
150 appears on any bonds, notes, or other obligations ceases to be
151 an officer before the delivery of the bonds, notes, or other
152 obligations, the signature or facsimile is valid and sufficient
153 for all purposes as if he or she had remained in office until
154 the delivery. The bonds, notes, or other obligations may be sold
155 at public or private sale for such price as the governing body
156 of the entity shall determine. Pending preparation of the
157 definitive bonds, the entity may issue interim certificates,
158 which shall be exchanged for the definitive bonds. The bonds may
159 be secured by a form of credit enhancement, if any, as the
160 entity deems appropriate. The bonds may be secured by an
161 indenture of trust or trust agreement. In addition, the
162 governing body of the legal entity may delegate, to an officer,
163 official, or agent of the legal entity as the governing body of
164 the legal entity may select, the power to determine the time;
165 manner of sale, public or private; maturities; rate of interest,
166 which may be fixed or may vary at the time and in accordance
167 with a specified formula or method of determination; and other
168 terms and conditions as may be deemed appropriate by the



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169 officer, official, or agent so designated by the governing body
170 of the legal entity. However, the amount and maturity of the
171 bonds, notes, or other obligations and the interest rate of the
172 bonds, notes, or other obligations must be within the limits
173 prescribed by the governing body of the legal entity and its
174 resolution delegating to an officer, official, or agent the
175 power to authorize the issuance and sale of the bonds, notes, or
176 other obligations.

177 3. Bonds, notes, or other obligations issued under
178 subparagraph 1. may be validated as provided in chapter 75. The
179 complaint in any action to validate the bonds, notes, or other
180 obligations must be filed only in the Circuit Court for Leon
181 County. The notice required to be published by s. 75.06 must be
182 published in Leon County and in each county that is a member of
183 the entity issuing the bonds, notes, or other obligations, or in
184 which a member of the entity is located, and the complaint and
185 order of the circuit court must be served only on the State
186 Attorney of the Second Judicial Circuit and on the state
187 attorney of each circuit in each county that is a member of the
188 entity issuing the bonds, notes, or other obligations or in
189 which a member of the entity is located. Section 75.04(2) does
190 not apply to a complaint for validation brought by the legal
191 entity.

192 4. The accomplishment of the authorized purposes of a
193 legal entity created under this paragraph is in all respects for
194 the benefit of the people of the state, for the increase of
195 their commerce and prosperity, and for the improvement of their
196 health and living conditions. Since the legal entity will



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197 perform essential governmental functions in accomplishing its
198 purposes, the legal entity is not required to pay any taxes or
199 assessments of any kind whatsoever upon any property acquired or
200 used by it for such purposes or upon any revenues at any time
201 received by it. The bonds, notes, and other obligations of an
202 entity, their transfer and the income therefrom, including any
203 profits made on the sale thereof, are at all times free from
204 taxation of any kind by the state or by any political
205 subdivision or other agency or instrumentality thereof. The
206 exemption granted in this subparagraph is not applicable to any
207 tax imposed by chapter 220 on interest, income, or profits on
208 debt obligations owned by corporations.

209 5. Subsequent to the acquisition or construction of any
210 wastewater facilities, water or alternative water supply
211 facilities, or water reuse facilities by a separate legal entity
212 created pursuant to this subsection, revenues or other income of
213 any description may not be transferred or paid to a member of a
214 separate legal entity or to any other county or municipality
215 from user fees or other charges or revenues generated from
216 customers not physically located within the jurisdictional or
217 service delivery boundaries of the member or the county or
218 municipality receiving the transfer or payment. Any transfer or
219 payment to a member or other local government shall be solely
220 from user fees or other charges or revenue generated from
221 customers physically located within the jurisdictional or
222 service delivery boundaries of the member or the local
223 government receiving the transfer or payment.



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224 6. The host government is guaranteed the right to acquire
225 any utility within its boundaries owned by the separate legal
226 entity. The separate legal entity shall sell and transfer a
227 utility to a host government for an amount equal to any
228 outstanding indebtedness associated with the utility to be sold
229 and transferred or an amount determined pursuant to any
230 resolution, trust agreement, or other financing document plus
231 the reasonable transaction costs incurred by the separate legal
232 entity to complete the sale and transfer.

233 Section 2. The acquisition requirements contained in the
234 amendment to s. 163.01(7)(g)1., Florida Statutes, provided in
235 this act which condition the acquisition by a separate legal
236 entity of public facilities that serve populations outside of
237 the members of the entity on the provision by such separate
238 legal entity of a potential acquisition notice to all host
239 governments, as defined in s. 163.01(7)(g)1., Florida Statutes,
240 and on the granting to a host government the opportunity to
241 adopt a membership resolution, a prohibition resolution, or an
242 approval resolution shall be retroactively applied and
243 substantial compliance with such acquisition requirements shall
244 be a specific condition of any acquisition subsequent to
245 September 1, 2002, of public facilities by a separate legal
246 entity created by interlocal agreement pursuant to s.
247 163.01(7)(g)1., Florida Statutes, pursuant to an acquisition
248 agreement entered into prior or subsequent to September 1, 2002.

249 Section 3. Paragraph (c) is added to subsection (2) of
250 section 367.081, Florida Statutes, to read:

251 367.081 Rates; procedure for fixing and changing.--



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252 (2)

253 (c) In establishing rates for a utility, the commission
254 shall not consider any gain or loss on the sale or condemnation
255 of a utility's assets that results in the loss of customers
256 served by such assets and the associated future customer revenue
257 streams. Any such gain or loss shall be borne by the
258 shareholders of the utility.

259 Section 4. This act shall take effect upon becoming a law
260 and shall apply retroactively to September 1, 2002.

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