

By Senator Argenziano

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1 A bill to be entitled
2 An act relating to the Florida Interlocal
3 Cooperation Act of 1969; amending s. 163.01,
4 F.S.; requiring notification of the host
5 government if a separate legal entity seeks to
6 acquire public facilities serving populations
7 outside the jurisdiction of members of the
8 separate legal entity; providing for the host
9 government to respond within a specified
10 period; providing that the host government may
11 not prohibit such acquisition if it fails to
12 respond within the specified period; defining
13 the governing body constituting the host
14 government for purposes of the act; authorizing
15 the host government to reserve the right to
16 review and approve rates, charges, and customer
17 classifications; providing certain limitations;
18 providing for retroactive application;
19 providing an effective date.

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21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Paragraph (g) of subsection (7) of section
24 163.01, Florida Statutes, is amended to read:

25 163.01 Florida Interlocal Cooperation Act of 1969.--
26 (7)

27 (g)1. Notwithstanding any other provisions of this
28 section, any separate legal entity created under this section,
29 the membership of which is limited to municipalities and
30 counties of the state, may acquire, own, construct, improve,
31 operate, and manage public facilities, or finance facilities

1 on behalf of any person, relating to a governmental function
2 or purpose, including, but not limited to, wastewater
3 facilities, water or alternative water supply facilities, and
4 water reuse facilities, which may serve populations within or
5 outside of the members of the entity. Notwithstanding s.
6 367.171(7), any separate legal entity created under this
7 paragraph is not subject to commission jurisdiction and may
8 not provide utility services within the service area of an
9 existing utility system unless it has received the consent of
10 the utility. A separate legal entity that seeks to acquire any
11 public facilities that serve populations outside of the
12 jurisdiction of members of the entity must notify in writing
13 each host government of the contemplated acquisition prior to
14 any transfer of ownership, use, or possession of any utility
15 assets to such separate legal entity. The potential
16 acquisition notice must be provided in writing to the
17 legislative head of the governing body of the host government
18 and its chief administrative officer and provide the name and
19 address of a contact person of the separate legal entity for
20 the receipt of information on the contemplated acquisition.
21 Within 45 days following receipt of the notice, the host
22 government may adopt a membership resolution indicating its
23 intent to become a member of the separate legal entity, a
24 prohibition resolution to prohibit the acquisition by the
25 separate legal entity of public facilities within its
26 jurisdiction, an approval resolution prescribing any
27 restrictions on the proposed acquisition required by the host
28 local government, or take no action of any kind. If a host
29 government adopts a membership resolution, the separate legal
30 entity shall accept the host government as a member prior to
31 any transfer of ownership, use, or possession of the public

1 facilities on the same basis as its existing members. If a
2 host government adopts a prohibition resolution, the separate
3 legal entity may not acquire the public facilities within such
4 host government's territory without specific consent of the
5 host government by future resolution. If a host government
6 does not adopt a membership resolution, a prohibition
7 resolution, or an approval resolution, the separate legal
8 entity may proceed to acquire the public facilities after the
9 45-day notice period without further notice, except as
10 otherwise agreed upon by the separate legal entity and the
11 host government. The host government may not prohibit the
12 acquisition of such public facilities if it has not responded
13 to the legal entity within the 45-day notice period. For
14 purposes of this paragraph, a "host government" is the
15 governing body of the county if a majority of the retail
16 utility customers to be served by the acquired public
17 facilities within the county reside in the unincorporated
18 area, or is the governing body of a municipality if the
19 majority of the retail utility customers to be served by the
20 acquired public facilities reside within the municipal
21 boundaries. Any host government may, in its adoption of an
22 approval resolution or a membership resolution or by
23 resolution adopted subsequent to the closing of an
24 acquisition, reserve the right to review and approve as fair
25 and reasonable the rates, charges, and customer
26 classifications adopted by the separate legal entity for the
27 use of the acquired public facilities within the jurisdiction
28 of the host local government. Such right of rate review and
29 approval by the host local government is subject to the
30 obligation of the separate legal entity to establish rates and
31 charges that comply with the requirements contained in any

1 resolution or trust agreement relating to the issuance of
2 bonds to acquire and improve the affected public facilities
3 and such right does not affect the obligation of the separate
4 legal entity to set rates at a level sufficient to pay debt
5 service on its obligations issued in relation to the affected
6 public facilities. This paragraph is an alternative provision
7 otherwise provided by law as authorized in s. 4, Art. VIII of
8 the State Constitution for any transfer of power as a result
9 of an acquisition of public facilities by a separate legal
10 entity from a municipality, county, or special district.The
11 entity may finance or refinance the acquisition, construction,
12 expansion, and improvement of such facilities relating to a
13 governmental function or purpose through the issuance of its
14 bonds, notes, or other obligations under this section or as
15 otherwise authorized by law. The entity has all the powers
16 provided by the interlocal agreement under which it is created
17 or which are necessary to finance, own, operate, or manage the
18 public facility, including, without limitation, the power to
19 establish rates, charges, and fees for products or services
20 provided by it, the power to levy special assessments, the
21 power to sell or finance all or a portion of such facility,
22 and the power to contract with a public or private entity to
23 manage and operate such facilities or to provide or receive
24 facilities, services, or products. Except as may be limited by
25 the interlocal agreement under which the entity is created,
26 all of the privileges, benefits, powers, and terms of s.
27 125.01, relating to counties, and s. 166.021, relating to
28 municipalities, are fully applicable to the entity. However,
29 neither the entity nor any of its members on behalf of the
30 entity may exercise the power of eminent domain over the
31 facilities or property of any existing water or wastewater

1 plant utility system, nor may the entity acquire title to any
2 water or wastewater plant utility facilities, other
3 facilities, or property which was acquired by the use of
4 eminent domain after the effective date of this act. Bonds,
5 notes, and other obligations issued by the entity are issued
6 on behalf of the public agencies that are members of the
7 entity.

8 2. Any entity created under this section may also
9 issue bond anticipation notes in connection with the
10 authorization, issuance, and sale of bonds. The bonds may be
11 issued as serial bonds or as term bonds or both. Any entity
12 may issue capital appreciation bonds or variable rate bonds.
13 Any bonds, notes, or other obligations must be authorized by
14 resolution of the governing body of the entity and bear the
15 date or dates; mature at the time or times, not exceeding 40
16 years from their respective dates; bear interest at the rate
17 or rates; be payable at the time or times; be in the
18 denomination; be in the form; carry the registration
19 privileges; be executed in the manner; be payable from the
20 sources and in the medium or payment and at the place; and be
21 subject to the terms of redemption, including redemption prior
22 to maturity, as the resolution may provide. If any officer
23 whose signature, or a facsimile of whose signature, appears on
24 any bonds, notes, or other obligations ceases to be an officer
25 before the delivery of the bonds, notes, or other obligations,
26 the signature or facsimile is valid and sufficient for all
27 purposes as if he or she had remained in office until the
28 delivery. The bonds, notes, or other obligations may be sold
29 at public or private sale for such price as the governing body
30 of the entity shall determine. Pending preparation of the
31 definitive bonds, the entity may issue interim certificates,

1 which shall be exchanged for the definitive bonds. The bonds
2 may be secured by a form of credit enhancement, if any, as the
3 entity deems appropriate. The bonds may be secured by an
4 indenture of trust or trust agreement. In addition, the
5 governing body of the legal entity may delegate, to an
6 officer, official, or agent of the legal entity as the
7 governing body of the legal entity may select, the power to
8 determine the time; manner of sale, public or private;
9 maturities; rate of interest, which may be fixed or may vary
10 at the time and in accordance with a specified formula or
11 method of determination; and other terms and conditions as may
12 be deemed appropriate by the officer, official, or agent so
13 designated by the governing body of the legal entity. However,
14 the amount and maturity of the bonds, notes, or other
15 obligations and the interest rate of the bonds, notes, or
16 other obligations must be within the limits prescribed by the
17 governing body of the legal entity and its resolution
18 delegating to an officer, official, or agent the power to
19 authorize the issuance and sale of the bonds, notes, or other
20 obligations.

21 3. Bonds, notes, or other obligations issued under
22 subparagraph 1. may be validated as provided in chapter 75.
23 The complaint in any action to validate the bonds, notes, or
24 other obligations must be filed only in the Circuit Court for
25 Leon County. The notice required to be published by s. 75.06
26 must be published in Leon County and in each county that is a
27 member of the entity issuing the bonds, notes, or other
28 obligations, or in which a member of the entity is located,
29 and the complaint and order of the circuit court must be
30 served only on the State Attorney of the Second Judicial
31 Circuit and on the state attorney of each circuit in each

1 county that is a member of the entity issuing the bonds,
2 notes, or other obligations or in which a member of the entity
3 is located. Section 75.04(2) does not apply to a complaint for
4 validation brought by the legal entity.

5 4. The accomplishment of the authorized purposes of a
6 legal entity created under this paragraph is in all respects
7 for the benefit of the people of the state, for the increase
8 of their commerce and prosperity, and for the improvement of
9 their health and living conditions. Since the legal entity
10 will perform essential governmental functions in accomplishing
11 its purposes, the legal entity is not required to pay any
12 taxes or assessments of any kind whatsoever upon any property
13 acquired or used by it for such purposes or upon any revenues
14 at any time received by it. The bonds, notes, and other
15 obligations of an entity, their transfer and the income
16 therefrom, including any profits made on the sale thereof, are
17 at all times free from taxation of any kind by the state or by
18 any political subdivision or other agency or instrumentality
19 thereof. The exemption granted in this subparagraph is not
20 applicable to any tax imposed by chapter 220 on interest,
21 income, or profits on debt obligations owned by corporations.

22 Section 2. The acquisition requirements contained in
23 the amendments to section 163.01(7)(g)1., Florida Statutes,
24 provided in this act which condition the acquisition by a
25 separate legal entity of public facilities that serve
26 populations outside of the members of the entity on the
27 provision by such separate legal entity of a potential
28 acquisition notice to all host governments and on the granting
29 to a host government the opportunity to adopt a membership
30 resolution, a prohibition resolution, or an approval
31 resolution shall be retroactively applied and substantial

1 compliance with such acquisition requirements shall be a
2 specific condition of any acquisition subsequent to September
3 1, 2002, of public facilities by a separate legal entity
4 created by interlocal agreement pursuant to section
5 163.01(7)(g)1., Florida Statutes, pursuant to an acquisition
6 agreement entered into prior or subsequent to September 1,
7 2002.

8 Section 3. This act shall take effect upon becoming a
9 law and shall apply retroactively to September 1, 2002.

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12 SENATE SUMMARY

13 Provides a procedure by which a separate legal entity may
14 acquire public facilities serving populations outside the
jurisdiction of members of the separate legal entity.
15 Requires that the county or municipality be notified of
the contemplated acquisition. Requires that the county or
16 municipality respond within 45 days following the notice.
Authorizes the county or municipality to reserve the
17 right to review and approve rates, charges, and customer
classifications. Provides for the act to apply
18 retroactively to September 1, 2002. (See bill for
details.)