

By the Committee on Comprehensive Planning; and Senators  
Argenziano, Cowin, Constantine and Fasano

316-1952-03

1                                   A bill to be entitled  
2           An act relating to utilities; amending s.  
3           163.01, F.S.; providing applicability of  
4           provisions relating to ownership and operation  
5           of utilities by entities composed of  
6           municipalities and counties; prescribing powers  
7           of counties and specified municipalities with  
8           respect to acquisition of water utilities and  
9           wastewater utilities by separate legal entities  
10          composed of municipalities and counties;  
11          authorizing the Public Service Commission to  
12          review the acquisition of a utility by two or  
13          more host governments; providing for a binding  
14          arbitration process under the Public Service  
15          Commission to resolve certain disputes relating  
16          to utility acquisition; authorizing the  
17          commission to adopt rules; requiring the Public  
18          Service Commission to establish rules that base  
19          the acquisition price for a host government to  
20          acquire a utility on certain information;  
21          amending s. 120.52, F.S.; deleting an exception  
22          from the requirements of ch. 120, F.S., for an  
23          entity created under s. 163.01(7), F.S.;  
24          amending s. 367.021, F.S.; excluding an entity  
25          created under s. 163.01(7)(g)1., F.S., from the  
26          definition of "governmental authority";  
27          amending s. 367.071, F.S.; deleting a provision  
28          authorizing a utility to be sold or transferred  
29          prior to approval of the Public Service  
30          Commission with a contingency clause in the  
31          contract; providing an effective date.

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

2  
3 Section 1. Paragraph (g) of subsection (7) of section  
4 163.01, Florida Statutes, is amended to read:

5 163.01 Florida Interlocal Cooperation Act of 1969.--

6 (7)

7 (g)1. Notwithstanding any other provisions of this  
8 section, any separate legal entity created under this section,  
9 the membership of which is limited to municipalities and  
10 counties of the state, may acquire, own, construct, improve,  
11 operate, and manage public facilities, or finance facilities  
12 on behalf of any person, relating to a governmental function  
13 or purpose, including, but not limited to, wastewater  
14 facilities, water or alternative water supply facilities, and  
15 water reuse facilities, which may serve populations within or  
16 outside of the members of the entity. Notwithstanding s.  
17 367.171(7), any separate legal entity created under this  
18 paragraph is not subject to Public Service Commission  
19 jurisdiction, except when a county or host government  
20 specifically requests binding arbitration services through the  
21 commission under subparagraphs 4. and 5. and as is otherwise  
22 provided for in general law. The separate legal entity ~~and~~ may  
23 not provide utility services within the service area of an  
24 existing utility system unless it has received the consent of  
25 the utility.

26 2. For purposes of this paragraph, the term "utility"  
27 means a water or wastewater utility and includes every person,  
28 separate legal entity, lessee, trustee, or receiver owning,  
29 operating, managing, or controlling a system, or proposing  
30 construction of a system, who is providing, or proposes to  
31 provide, water or wastewater service to the public for

1 compensation. For purposes of this paragraph, the term  
2 "system" means each separate water or wastewater facility  
3 providing service. For purposes of this paragraph, the term  
4 "host government" means either the governing body of the  
5 county, if the largest number of equivalent residential  
6 connections currently served by a system of the utility is  
7 located in the unincorporated area, or the governing body of a  
8 municipality, if the largest number of equivalent residential  
9 connections currently served by a system of the utility is  
10 located within that municipality's boundaries. A separate  
11 legal entity that seeks to acquire any utility must notify the  
12 host government in writing by certified mail about the  
13 contemplated acquisition not less than 90 days before any  
14 proposed transfer of ownership, use, or possession of any  
15 utility assets by such separate legal entity. The potential  
16 acquisition notice must be provided to the legislative head of  
17 the governing body of the host government and to its chief  
18 administrative officer and must provide the name and address  
19 of a contact person for the separate legal entity and  
20 information identified in s. 367.071(4)(a) concerning the  
21 contemplated acquisition.

22 3. Within 90 days following receipt of the notice, the  
23 host government may adopt a resolution to approve the utility  
24 acquisition; adopt a resolution to prohibit the utility  
25 acquisition by the separate legal entity if the host  
26 government determines that the proposed acquisition is not in  
27 the public interest; request in writing an automatic 45-day  
28 extension of the 90-day period in order to allow sufficient  
29 time for the host government to evaluate the proposed  
30 acquisition; or take no action to agenda the proposed  
31 acquisition for discussion at a public meeting, which shall be

1 construed as approval of the proposed acquisition. If a host  
2 government adopts a prohibition resolution, the separate legal  
3 entity may not acquire the utility within that host  
4 government's territory without specific consent of the host  
5 government by future resolution. If a host government does not  
6 adopt a prohibition resolution or an approval resolution, does  
7 not provide a written request for an extension of the 90-day  
8 notice period, and takes no action to initiate judicial  
9 proceedings regarding the proposed acquisition, the separate  
10 legal entity may proceed to acquire the utility after the  
11 90-day notice period without further notice, except as  
12 otherwise agreed upon by the separate legal entity and the  
13 host government. In utility acquisitions involving two or more  
14 host governments, the Public Service Commission shall consider  
15 whether the sale, assignment, or transfer of the utility is in  
16 the public interest pursuant to the provisions of s.  
17 367.071(1). Each county regulating water and wastewater  
18 utilities or systems pursuant to s. 367.171 shall consider  
19 whether the sale, assignment, or transfer of the utility or  
20 utility systems within its jurisdictions is in the public  
21 interest pursuant to the county ordinances governing water and  
22 wastewater utility regulation.

23 4. In addition to the host government's right to  
24 review as fair and reasonable the rates, charges, customer  
25 classifications, and terms of service that will be in place at  
26 the time of acquisition, any county with equivalent  
27 residential connections from that utility located within its  
28 boundaries has the right to review and approve as fair and  
29 reasonable any later changes proposed by the separate legal  
30 entity to the rates, charges, customer classifications, and  
31 terms of service, before adoption by the separate legal

1 entity. In addition, such counties have the right to review  
2 and approve any changes to the financing of such facilities  
3 which may result in increased costs to customers. Such right  
4 of review and approval by the county is subject to the  
5 obligation of the separate legal entity to establish rates and  
6 charges that comply with the requirements contained in any  
7 resolution or trust agreement relating to the issuance of  
8 bonds to acquire and improve the affected utility, and such  
9 right does not affect the obligation of the separate legal  
10 entity to set rates at a level sufficient to pay debt service  
11 on its obligations issued in relation to the affected utility.  
12 In order to facilitate review of proposed changes by such  
13 counties, the separate legal entity must notify the counties  
14 in writing by certified mail about the proposed changes not  
15 less than 90 days before it implements any changes. The notice  
16 of proposed changes must be provided to the legislative head  
17 of the governing body of each affected county and to its chief  
18 administrative officer and must provide the name and address  
19 of a contact person for the separate legal entity and  
20 information identified in s. 367.081(2)(a)1. as it applies to  
21 publicly owned utilities about the proposed changes. If after  
22 review the county believes that the proposed changes are in  
23 the public interest, the county may pass a resolution  
24 approving the proposed changes. If after review the county  
25 believes that the proposed changes are not in the public  
26 interest, the county may enter into negotiation with the  
27 separate legal entity to resolve those concerns. If no  
28 agreement is reached within 30 days after the county's  
29 determination that the proposed changes are not in the public  
30 interest, the county may request and, if requested, shall  
31 receive binding arbitration services through the Public

1 Service Commission to resolve the dispute with the separate  
2 legal entity. The commission shall develop and adopt  
3 administrative rules governing the arbitration process and  
4 establishing fees for this dispute-resolution service.

5 5. The host government is guaranteed the right to  
6 acquire any utility or utility system within its boundaries  
7 owned by the separate legal entity. In those instances when  
8 the separate legal entity and the host government cannot agree  
9 on the terms and conditions of the acquisition, the host  
10 government may request and, if requested, shall receive  
11 binding arbitration services through the Public Service  
12 Commission to resolve the disputed acquisition terms. The  
13 commission shall develop and adopt administrative rules  
14 governing the arbitration process and establishing the fees  
15 for these services. In developing and adopting its rules  
16 governing the acquisition price for a given host government to  
17 acquire the utility or utility system located within its  
18 jurisdiction, the Public Service Commission shall, to the  
19 greatest extent possible, base the acquisition price on the  
20 same percentage to the total bonded indebtedness of the  
21 separate legal entity upon acquiring the utility as the  
22 acquired system's rate base was to the utility's total rate  
23 base at the time transferred from a regulated utility to the  
24 separate legal entity. This paragraph is an alternative  
25 provision otherwise provided by law as authorized in s. 4,  
26 Art. VIII of the State Constitution for any transfer of power  
27 as a result of an acquisition of a utility by a separate legal  
28 entity from a municipality, county, or special district.

29 6. The entity may finance or refinance the  
30 acquisition, construction, expansion, and improvement of such  
31 facilities relating to a governmental function or purpose

1 through the issuance of its bonds, notes, or other obligations  
2 under this section or as otherwise authorized by law. Except  
3 as limited by the terms and conditions of the utility  
4 acquisition agreement, as approved by the applicable host  
5 government, the entity has all the powers provided by the  
6 interlocal agreement under which it is created or which are  
7 necessary to finance, own, operate, or manage the public  
8 facility, including, without limitation, the power to  
9 establish rates, charges, and fees for products or services  
10 provided by it, the power to levy special assessments, the  
11 power to sell or finance all or a portion of such facility,  
12 and the power to contract with a public or private entity to  
13 manage and operate such facilities or to provide or receive  
14 facilities, services, or products. Except as may be limited by  
15 the interlocal agreement under which the entity is created,  
16 all of the privileges, benefits, powers, and terms of s.  
17 125.01, relating to counties, and s. 166.021, relating to  
18 municipalities, are fully applicable to the entity. However,  
19 neither the entity nor any of its members on behalf of the  
20 entity may exercise the power of eminent domain over the  
21 facilities or property of any existing water or wastewater  
22 plant utility system, nor may the entity acquire title to any  
23 water or wastewater plant utility facilities, other  
24 facilities, or property which was acquired by the use of  
25 eminent domain after the effective date of this act. Bonds,  
26 notes, and other obligations issued by the entity are issued  
27 on behalf of the public agencies that are members of the  
28 entity.

29 ~~7.2.~~ Except as limited by the terms and conditions of  
30 the utility acquisition agreement, as approved by the  
31 applicable host government, any entity created under this

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



1 maturities; rate of interest, which may be fixed or may vary  
2 at the time and in accordance with a specified formula or  
3 method of determination; and other terms and conditions as may  
4 be deemed appropriate by the officer, official, or agent so  
5 designated by the governing body of the legal entity. However,  
6 the amount and maturity of the bonds, notes, or other  
7 obligations and the interest rate of the bonds, notes, or  
8 other obligations must be within the limits prescribed by the  
9 governing body of the legal entity and its resolution  
10 delegating to an officer, official, or agent the power to  
11 authorize the issuance and sale of the bonds, notes, or other  
12 obligations.

13 8.3. Bonds, notes, or other obligations issued under  
14 this paragraph ~~subparagraph 1~~ may be validated as provided in  
15 chapter 75. The complaint in any action to validate the bonds,  
16 notes, or other obligations must be filed only in the Circuit  
17 Court for Leon County. The notice required to be published by  
18 s. 75.06 must be published in Leon County and in each county  
19 that is a member of the entity issuing the bonds, notes, or  
20 other obligations, or in which a member of the entity is  
21 located, and the complaint and order of the circuit court must  
22 be served only on the State Attorney of the Second Judicial  
23 Circuit and on the state attorney of each circuit in each  
24 county that is a member of the entity issuing the bonds,  
25 notes, or other obligations or in which a member of the entity  
26 is located. Section 75.04(2) does not apply to a complaint for  
27 validation brought by the legal entity.

28 9.4. The accomplishment of the authorized purposes of  
29 a legal entity created under this paragraph is in all respects  
30 for the benefit of the people of the state, for the increase  
31 of their commerce and prosperity, and for the improvement of

1 their health and living conditions. Since the legal entity  
2 will perform essential governmental functions in accomplishing  
3 its purposes, the legal entity is not required to pay any  
4 taxes or assessments of any kind whatsoever upon any property  
5 acquired or used by it for such purposes or upon any revenues  
6 at any time received by it. The bonds, notes, and other  
7 obligations of an entity, their transfer and the income  
8 therefrom, including any profits made on the sale thereof, are  
9 at all times free from taxation of any kind by the state or by  
10 any political subdivision or other agency or instrumentality  
11 thereof. The exemption granted in this subparagraph is not  
12 applicable to any tax imposed by chapter 220 on interest,  
13 income, or profits on debt obligations owned by corporations.

14 Section 2. Subsection (1) of section 120.52, Florida  
15 Statutes, is amended to read:

16 120.52 Definitions.--As used in this act:

17 (1) "Agency" means:

18 (a) The Governor in the exercise of all executive  
19 powers other than those derived from the constitution.

20 (b) Each:

21 1. State officer and state department, and each  
22 departmental unit described in s. 20.04.

23 2. Authority, including a regional water supply  
24 authority.

25 3. Board.

26 4. Commission, including the Commission on Ethics and  
27 the Fish and Wildlife Conservation Commission when acting  
28 pursuant to statutory authority derived from the Legislature.

29 5. Regional planning agency.

30 6. Multicounty special district with a majority of its  
31 governing board comprised of nonelected persons.

1           7. Educational units.

2           8. Entity described in chapters 163, 373, 380, and 582  
3 and s. 186.504.

4           (c) Each other unit of government in the state,  
5 including counties and municipalities, to the extent they are  
6 expressly made subject to this act by general or special law  
7 or existing judicial decisions.

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9 This definition does not include any legal entity or agency  
10 created in whole or in part pursuant to chapter 361, part II,  
11 an expressway authority pursuant to chapter 348, ~~any legal or~~  
12 ~~administrative entity created by an interlocal agreement~~  
13 ~~pursuant to s. 163.01(7), unless any party to such agreement~~  
14 ~~is otherwise an agency as defined in this subsection, or any~~  
15 multicounty special district with a majority of its governing  
16 board comprised of elected persons; however, this definition  
17 shall include a regional water supply authority.

18           Section 3. Subsection (7) of section 367.021, Florida  
19 Statutes, is amended to read:

20           367.021 Definitions.--As used in this chapter, the  
21 following words or terms shall have the meanings indicated:

22           (7) "Governmental authority" means a political  
23 subdivision, as defined by s. 1.01(8), a regional water supply  
24 authority created pursuant to s. 373.1962, or a nonprofit  
25 corporation formed for the purpose of acting on behalf of a  
26 political subdivision with respect to a water or wastewater  
27 facility; however, this definition shall exclude a separate  
28 legal entity created pursuant to s. 163.01(7)(g)1.

29           Section 4. Subsections (1) and (4) of section 367.071,  
30 Florida Statutes, are amended to read:

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1           367.071 Sale, assignment, or transfer of certificate  
2 of authorization, facilities, or control.--

3           (1) A ~~No~~ utility may not ~~shall~~ sell, assign, or  
4 transfer its certificate of authorization, facilities or any  
5 portion thereof, or majority organizational control without  
6 determination and approval of the commission that the proposed  
7 sale, assignment, or transfer is in the public interest and  
8 that the buyer, assignee, or transferee will fulfill the  
9 commitments, obligations, and representations of the utility.  
10 ~~However, a sale, assignment, or transfer of its certificate of~~  
11 ~~authorization, facilities or any portion thereof, or majority~~  
12 ~~organizational control may occur prior to commission approval~~  
13 ~~if the contract for sale, assignment, or transfer is made~~  
14 ~~contingent upon commission approval.~~

15           (4) An application shall be disposed of as provided in  
16 s. 367.045, except that:

17           (a) The sale of facilities, in whole or part, to a  
18 governmental authority, as defined in s. 367.021(7), shall be  
19 approved as a matter of right; however, the governmental  
20 authority shall, prior to taking any official action, obtain  
21 from the utility or commission with respect to the facilities  
22 to be sold the most recent available income and expense  
23 statement, balance sheet, and statement of rate base for  
24 regulatory purposes and contributions-in-aid-of-construction.  
25 Any request for rate relief pending before the commission at  
26 the time of sale is deemed to have been withdrawn. Interim  
27 rates, if previously approved by the commission, must be  
28 discontinued, and any money collected pursuant to interim rate  
29 relief must be refunded to the customers of the utility with  
30 interest.

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1           (b) When paragraph (a) does not apply, the commission  
2 shall amend the certificate of authorization as necessary to  
3 reflect the change resulting from the sale, assignment, or  
4 transfer.

5           Section 5. This act shall take effect upon becoming a  
6 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 Senate Bills 140, 998 and 1060

4 This committee substitute gives the Public Service Commission  
5 authority to review utility acquisitions involving two or  
6 more host governments to determine whether the sale,  
7 assignment, or transfer of the utility is in the public  
8 interest. Also, the committee substitute requires each county  
9 regulating water and wastewater utilities or systems under s.  
10 367.171, F.S., to review the transfer of a utility or utility  
11 systems within its jurisdiction to determine whether it is in  
12 the public interest pursuant to county ordinances governing  
13 water and wastewater utility regulation.

14 In addition, the committee substitute requires the Public  
15 Service Commission, when developing its rules governing the  
16 acquisition price for a host government to acquire a utility  
17 within its jurisdiction, to base the acquisition price, to the  
18 greatest extent possible, on the same percentage to the total  
19 bonded indebtedness of the separate legal entity upon  
20 acquiring the utility as the acquired system's rate base was  
21 to the utility's total rate base at the time it was  
22 transferred from a regulated utility to the separate legal  
23 entity.

24 The committee substitute provides a definition for the word  
25 "system". It also deletes the exception for a separate legal  
26 entity from the definition of "agency" for the purposes of ch.  
27 120, F.S., the Administrative Procedure Act. The committee  
28 substitute also amends s. 367.021, F.S., to exclude a separate  
29 legal entity created under s. 163.01(7)(g)1., F.S., from the  
30 definition of "governmental authority". Further, the committee  
31 substitute amends s. 367.071, F.S., to delete a provision that  
allows a utility to be sold or transferred prior to the  
approval of the Public Service Commission if the contract for  
sale is contingent upon commission approval.

21 The committee substitute removes a provision prohibiting a  
22 separate legal entity created by local governments under s.  
23 163.01(7)(g)1., F.S., from acquiring, owning, constructing,  
24 improving, or operating a water utility outside the  
25 territorial limits of the members of the separate legal  
26 entity. Also, the committee substitute deletes a provision  
27 allowing the host government to adopt a membership resolution  
28 indicating its intent to become a member of the separate legal  
29 entity after receiving notice of the proposed acquisition of a  
30 utility by the entity. The committee substitute removes a  
31 provision allowing the host government to review and approve  
proposed changes to rates, charges, and customer  
classifications after the acquisition of a utility by a  
separate legal entity. Finally, the committee substitute  
deletes a retroactive clause and a provision stating that a  
separate legal entity acquiring a utility subsequent to  
September 1, 2002 must substantially comply with the  
requirements of the act.