

By the Committees on Communication and Public Utilities;  
Comprehensive Planning; and Senators Argenziano, Cowin,  
Constantine and Fasano

319-2131-03

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)(g)1., 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

1 contract; providing severability; providing  
2 applicability; providing an effective date.

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

5  
6 Section 1. Paragraph (g) of subsection (7) of section  
7 163.01, Florida Statutes, is amended to read:

8 163.01 Florida Interlocal Cooperation Act of 1969.--  
9 (7)

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

29 2. For purposes of this paragraph, the term "utility"  
30 means a water or wastewater utility and includes every person,  
31 separate legal entity, lessee, trustee, or receiver owning,

1 operating, managing, or controlling a system, or proposing  
2 construction of a system, who is providing, or proposes to  
3 provide, water or wastewater service to the public for  
4 compensation. For purposes of this paragraph, the term  
5 "system" means each separate water or wastewater facility  
6 providing service. For purposes of this paragraph, the term  
7 "host government" means either the governing body of the  
8 county, if the largest number of equivalent residential  
9 connections currently served by a system of the utility is  
10 located in the unincorporated area, or the governing body of a  
11 municipality, if the largest number of equivalent residential  
12 connections currently served by a system of the utility is  
13 located within that municipality's boundaries. For purposes of  
14 this paragraph, the term "separate legal entity" may mean any  
15 entity created by interlocal agreement the membership of which  
16 is limited to two or more municipalities or counties of the  
17 state, but which entity is legally separate and apart from any  
18 of its member governments. A separate legal entity that seeks  
19 to acquire any utility must notify the host government in  
20 writing by certified mail about the contemplated acquisition  
21 not less than 90 days before any proposed transfer of  
22 ownership, use, or possession of any utility assets by such  
23 separate legal entity. The potential acquisition notice must  
24 be provided to the legislative head of the governing body of  
25 the host government and to its chief administrative officer  
26 and must provide the name and address of a contact person for  
27 the separate legal entity and information identified in s.  
28 367.071(4)(a) concerning the contemplated acquisition.

29 3. Within 90 days following receipt of the notice, the  
30 host government may adopt a resolution to become a member of  
31 the separate legal entity; adopt a resolution to approve the

1 utility acquisition; adopt a resolution to prohibit the  
2 utility acquisition by the separate legal entity if the host  
3 government determines that the proposed acquisition is not in  
4 the public interest; request in writing an automatic 45-day  
5 extension of the 90-day period in order to allow sufficient  
6 time for the host government to evaluate the proposed  
7 acquisition; or take no action to agenda the proposed  
8 acquisition for discussion at a public meeting, which shall be  
9 construed as denial of the proposed acquisition. If a host  
10 government adopts a prohibition resolution, the separate legal  
11 entity may not acquire the utility within that host  
12 government's territory without specific consent of the host  
13 government by future resolution. If a host government adopts a  
14 membership resolution, the separate legal entity must accept  
15 the host government as a member before any transfer of  
16 ownership, use, or possession of the utility or the utility  
17 facilities on the same basis as its existing members. If a  
18 host government does not adopt a prohibition resolution or an  
19 approval resolution, does not provide a written request for an  
20 extension of the 90-day notice period, and takes no action to  
21 initiate judicial proceedings regarding the proposed  
22 acquisition, the separate legal entity may proceed to acquire  
23 the utility after the 90-day notice period without further  
24 notice, except as otherwise agreed upon by the separate legal  
25 entity and the host government. In utility acquisitions  
26 involving two or more host governments, the Public Service  
27 Commission shall consider whether the sale, assignment, or  
28 transfer of the utility is in the public interest pursuant to  
29 the provisions of s. 367.071(1).

30 4. In addition to the host government's right to  
31 review as fair and reasonable the rates, charges, customer

1 classifications, and terms of service that will be in place at  
2 the time of acquisition, the host government has the right to  
3 review and approve as fair and reasonable any later changes  
4 proposed by the separate legal entity to the rates, charges,  
5 customer classifications, and terms of service, before  
6 adoption by the separate legal entity. In addition, the host  
7 government has the right to review and approve any changes to  
8 the financing of such facilities which may result in increased  
9 costs to customers. Such right of review and approval by the  
10 host government is subject to the obligation of the separate  
11 legal entity to establish rates and charges that comply with  
12 the requirements contained in any resolution or trust  
13 agreement relating to the issuance of bonds to acquire and  
14 improve the affected utility, and such right does not affect  
15 the obligation of the separate legal entity to set rates at a  
16 level sufficient to pay debt service on its obligations issued  
17 in relation to the host government utility. In order to  
18 facilitate review of proposed changes by such host government,  
19 the separate legal entity must notify the host government in  
20 writing by certified mail about the proposed changes not less  
21 than 90 days before it implements any changes. The notice of  
22 proposed changes must be provided to the legislative head of  
23 the governing body of each host government and to its chief  
24 administrative officer and must provide the name and address  
25 of a contact person for the separate legal entity and  
26 information identified in s. 367.081(2)(a)1. as it applies to  
27 publicly owned utilities about the proposed changes. If after  
28 review the host government believes that the proposed changes  
29 are in the public interest, the host government may pass a  
30 resolution approving the proposed changes. If, after review,  
31 the host government believes that the proposed changes are not

1 in the public interest, the host government may enter into  
2 negotiation with the separate legal entity to resolve those  
3 concerns. If no agreement is reached within 30 days after the  
4 host government's determination that the proposed changes are  
5 not in the public interest, the host government may request  
6 and, if requested, shall receive binding arbitration services  
7 through the Public Service Commission to resolve the dispute  
8 with the separate legal entity. The commission shall develop  
9 and adopt administrative rules governing the arbitration  
10 process and establishing fees for this dispute-resolution  
11 service.

12 5. After the acquisition or construction of any  
13 utility systems by a separate legal entity created under this  
14 subsection, revenues or any other income may not be  
15 transferred or paid to a member of a separate legal entity, or  
16 to any other county or municipality, from user fees or other  
17 charges or revenues generated from customers that are not  
18 physically located within the jurisdictional or service  
19 delivery boundaries of the member, county, or municipality  
20 receiving the transfer or payment. Any transfer or payment to  
21 a member or other local government must be solely from user  
22 fees or other charges or revenues generated from customers  
23 that are physically located within the jurisdictional or  
24 service delivery boundaries of the member or local government  
25 receiving the transfer or payment.

26 6. The host government is guaranteed the right to  
27 acquire any utility or utility system that it hosts owned by  
28 the separate legal entity. In those instances when the  
29 separate legal entity and the host government cannot agree on  
30 the terms and conditions of the acquisition, the host  
31 government may request and, if requested, shall receive

1 binding arbitration services through the Public Service  
2 Commission to resolve the disputed acquisition terms. The  
3 commission shall develop and adopt administrative rules  
4 governing the arbitration process and establishing the fees  
5 for these services. In developing and adopting its rules  
6 governing the acquisition price for a given host government to  
7 acquire the utility or utility system located within its  
8 jurisdiction, the Public Service Commission shall, to the  
9 greatest extent possible, base the acquisition price on the  
10 same percentage to the total bonded indebtedness of the  
11 separate legal entity upon acquiring the utility as the  
12 acquired system's rate base was to the utility's total rate  
13 base at the time transferred from a regulated utility to the  
14 separate legal entity. This paragraph is an alternative  
15 provision otherwise provided by law as authorized in s. 4,  
16 Art. VIII of the State Constitution for any transfer of power  
17 as a result of an acquisition of a utility by a separate legal  
18 entity from a municipality, county, or special district.

19       7. The entity may finance or refinance the  
20 acquisition, construction, expansion, and improvement of such  
21 facilities relating to a governmental function or purpose  
22 through the issuance of its bonds, notes, or other obligations  
23 under this section or as otherwise authorized by law. Except  
24 as limited by the terms and conditions of the utility  
25 acquisition agreement, as approved by the applicable host  
26 government, the entity has all the powers provided by the  
27 interlocal agreement under which it is created or which are  
28 necessary to finance, own, operate, or manage the public  
29 facility, including, without limitation, the power to  
30 establish rates, charges, and fees for products or services  
31 provided by it, the power to levy special assessments, the

1 power to sell or finance all or a portion of such facility,  
2 and the power to contract with a public or private entity to  
3 manage and operate such facilities or to provide or receive  
4 facilities, services, or products. Except as may be limited by  
5 the interlocal agreement under which the entity is created,  
6 all of the privileges, benefits, powers, and terms of s.  
7 125.01, relating to counties, and s. 166.021, relating to  
8 municipalities, are fully applicable to the entity. However,  
9 neither the entity nor any of its members on behalf of the  
10 entity may exercise the power of eminent domain over the  
11 facilities or property of any existing water or wastewater  
12 plant utility system, nor may the entity acquire title to any  
13 water or wastewater plant utility facilities, other  
14 facilities, or property which was acquired by the use of  
15 eminent domain after the effective date of this act. Bonds,  
16 notes, and other obligations issued by the entity are issued  
17 on behalf of the public agencies that are members of the  
18 entity.

19 8.2. Except as limited by the terms and conditions of  
20 the utility acquisition agreement, as approved by the  
21 applicable host government, any entity created under this  
22 section may also issue bond anticipation notes in connection  
23 with the authorization, issuance, and sale of bonds. The bonds  
24 may be issued as serial bonds or as term bonds or both. Any  
25 entity may issue capital appreciation bonds or variable rate  
26 bonds. Any bonds, notes, or other obligations must be  
27 authorized by resolution of the governing body of the entity  
28 and bear the date or dates; mature at the time or times, not  
29 exceeding 40 years from their respective dates; bear interest  
30 at the rate or rates; be payable at the time or times; be in  
31 the denomination; be in the form; carry the registration



1 | privileges; be executed in the manner; be payable from the  
2 | sources and in the medium or payment and at the place; and be  
3 | subject to the terms of redemption, including redemption prior  
4 | to maturity, as the resolution may provide. If any officer  
5 | whose signature, or a facsimile of whose signature, appears on  
6 | any bonds, notes, or other obligations ceases to be an officer  
7 | before the delivery of the bonds, notes, or other obligations,  
8 | the signature or facsimile is valid and sufficient for all  
9 | purposes as if he or she had remained in office until the  
10 | delivery. The bonds, notes, or other obligations may be sold  
11 | at public or private sale for such price as the governing body  
12 | of the entity shall determine. Pending preparation of the  
13 | definitive bonds, the entity may issue interim certificates,  
14 | which shall be exchanged for the definitive bonds. The bonds  
15 | may be secured by a form of credit enhancement, if any, as the  
16 | entity deems appropriate. The bonds may be secured by an  
17 | indenture of trust or trust agreement. In addition, the  
18 | governing body of the legal entity may delegate, to an  
19 | officer, official, or agent of the legal entity as the  
20 | governing body of the legal entity may select, the power to  
21 | determine the time; manner of sale, public or private;  
22 | maturities; rate of interest, which may be fixed or may vary  
23 | at the time and in accordance with a specified formula or  
24 | method of determination; and other terms and conditions as may  
25 | be deemed appropriate by the officer, official, or agent so  
26 | designated by the governing body of the legal entity. However,  
27 | the amount and maturity of the bonds, notes, or other  
28 | obligations and the interest rate of the bonds, notes, or  
29 | other obligations must be within the limits prescribed by the  
30 | governing body of the legal entity and its resolution  
31 | delegating to an officer, official, or agent the power to

1 authorize the issuance and sale of the bonds, notes, or other  
2 obligations.

3       9.3. Bonds, notes, or other obligations issued under  
4 this paragraph ~~subparagraph 1.~~ may be validated as provided in  
5 chapter 75. The complaint in any action to validate the bonds,  
6 notes, or other obligations must be filed only in the Circuit  
7 Court for Leon County. The notice required to be published by  
8 s. 75.06 must be published in Leon County and in each county  
9 that is a member of the entity issuing the bonds, notes, or  
10 other obligations, or in which a member of the entity is  
11 located, and the complaint and order of the circuit court must  
12 be served only on the State Attorney of the Second Judicial  
13 Circuit and on the state attorney of each circuit in each  
14 county that is a member of the entity issuing the bonds,  
15 notes, or other obligations or in which a member of the entity  
16 is located. Section 75.04(2) does not apply to a complaint for  
17 validation brought by the legal entity.

18       10.4. The accomplishment of the authorized purposes of  
19 a legal entity created under this paragraph is in all respects  
20 for the benefit of the people of the state, for the increase  
21 of their commerce and prosperity, and for the improvement of  
22 their health and living conditions. Since the legal entity  
23 will perform essential governmental functions in accomplishing  
24 its purposes, the legal entity is not required to pay any  
25 taxes or assessments of any kind whatsoever upon any property  
26 acquired or used by it for such purposes or upon any revenues  
27 at any time received by it. The bonds, notes, and other  
28 obligations of an entity, their transfer and the income  
29 therefrom, including any profits made on the sale thereof, are  
30 at all times free from taxation of any kind by the state or by  
31 any political subdivision or other agency or instrumentality

1 thereof. The exemption granted in this subparagraph is not  
2 applicable to any tax imposed by chapter 220 on interest,  
3 income, or profits on debt obligations owned by corporations.

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

6 120.52 Definitions.--As used in this act:

7 (1) "Agency" means:

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

10 (b) Each:

11 1. State officer and state department, and each  
12 departmental unit described in s. 20.04.

13 2. Authority, including a regional water supply  
14 authority.

15 3. Board.

16 4. Commission, including the Commission on Ethics and  
17 the Fish and Wildlife Conservation Commission when acting  
18 pursuant to statutory authority derived from the Legislature.

19 5. Regional planning agency.

20 6. Multicounty special district with a majority of its  
21 governing board comprised of nonelected persons.

22 7. Educational units.

23 8. Entity described in chapters 163, 373, 380, and 582  
24 and s. 186.504.

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

29  
30 This definition does not include any legal entity or agency  
31 created in whole or in part pursuant to chapter 361, part II,

1 an expressway authority pursuant to chapter 348, any legal or  
2 administrative entity created by an interlocal agreement  
3 pursuant to s. 163.01(7), except those created pursuant to s.  
4 163.01(7)(g)1., unless any party to such agreement is  
5 otherwise an agency as defined in this subsection, or any  
6 multicounty special district with a majority of its governing  
7 board comprised of elected persons; however, this definition  
8 shall include a regional water supply authority.

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

11 367.021 Definitions.--As used in this chapter, the  
12 following words or terms shall have the meanings indicated:

13 (7) "Governmental authority" means a political  
14 subdivision, as defined by s. 1.01(8), a regional water supply  
15 authority created pursuant to s. 373.1962, or a nonprofit  
16 corporation formed for the purpose of acting on behalf of a  
17 political subdivision with respect to a water or wastewater  
18 facility; however, this definition shall exclude a separate  
19 legal entity created pursuant to s. 163.01(7)(g)1.

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

22 367.071 Sale, assignment, or transfer of certificate  
23 of authorization, facilities, or control.--

24 (1) A ~~No~~ utility may not ~~shall~~ sell, assign, or  
25 transfer its certificate of authorization, facilities or any  
26 portion thereof, or majority organizational control without  
27 determination and approval of the commission that the proposed  
28 sale, assignment, or transfer is in the public interest and  
29 that the buyer, assignee, or transferee will fulfill the  
30 commitments, obligations, and representations of the utility.  
31 ~~However, a sale, assignment, or transfer of its certificate of~~

1 ~~authorization, facilities or any portion thereof, or majority~~  
2 ~~organizational control may occur prior to commission approval~~  
3 ~~if the contract for sale, assignment, or transfer is made~~  
4 ~~contingent upon commission approval.~~

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

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

21 (b) When paragraph (a) does not apply, the commission  
22 shall amend the certificate of authorization as necessary to  
23 reflect the change resulting from the sale, assignment, or  
24 transfer.

25 Section 5. If any provision of this act or the  
26 application thereof to any person or circumstance is held  
27 invalid, the invalidity does not affect other provisions or  
28 applications of this act which can be given effect without the  
29 invalid provision or application, and to this end the  
30 provisions of this act are declared severable.

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1           Section 6. This act shall take effect upon becoming a  
2 law and shall apply to all contracts pending on that date.

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4                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
5                           COMMITTEE SUBSTITUTE FOR  
6                           CS/SBs 140, 998 & 1060

7 The committee substitute for committee substitute for Senate  
8 Bills 140, 998, & 1060:

9 -Defines the term "separate legal entity;"

10 -Allows a host government to adopt a resolution to become a  
11 member of a separate legal entity and requires the separate  
12 legal entity to accept the host on the same basis as existing  
13 members;

14 -Provides that if the host government takes no action to  
15 agenda the proposed acquisition, this constitutes a denial of  
16 the acquisition;

17 -Deletes the provision allowing a county that regulates water  
18 and wastewater to review the acquisition to determine whether  
19 it is in the public interest;

20 -Gives the host government, not the county, the right to  
21 review proposed changes in rates and services;

22 -Requires that any payments or transfers to a member or a  
23 county or municipality from a utility owned by a separate  
24 legal entity come from user fees or other charges or revenues  
25 from customers physically located within the jurisdictional or  
26 service boundaries of the member or county or municipality;

27 -Makes only entities created by interlocal agreement pursuant  
28 to s. 163.01(7)(g) subject to the definition of "agency" in  
29 chapter 120;

30 -Adds a severability clause;

31 -Provides for applicability.