

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 contract; providing severability; providing

1 legislative findings with respect to loss of
2 property values due to the proximity of a
3 regional water reservoir; authorizing a cause
4 of action for a property owner; specifying a
5 period during which a property owner may
6 present a claim for compensation to the
7 regional water supply authority that
8 constructs, operates, and maintains the
9 reservoir; providing requirements for the offer
10 of compensation by a regional water supply
11 authority; providing for judicial review under
12 the Bert J. Harris, Jr., Private Property
13 Rights Protection Act; providing for an award
14 of costs and attorney's fees; providing for
15 future repeal of the section; providing for
16 applicability; providing effective dates.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Paragraph (g) of subsection (7) of section
21 163.01, Florida Statutes, is amended to read:

22 163.01 Florida Interlocal Cooperation Act of 1969.--
23 (7)

24 (g)1. Notwithstanding any other provisions of this
25 section, any separate legal entity created under this section,
26 the membership of which is limited to municipalities and
27 counties of the state, may acquire, own, construct, improve,
28 operate, and manage public facilities, or finance facilities
29 on behalf of any person, relating to a governmental function
30 or purpose, including, but not limited to, wastewater
31 facilities, water or alternative water supply facilities, and

1 water reuse facilities, which may serve populations within or
2 outside of the members of the entity. Notwithstanding s.
3 367.171(7), any separate legal entity created under this
4 paragraph is not subject to Public Service Commission
5 jurisdiction, except when a host government specifically
6 requests binding arbitration services through the commission
7 under subparagraphs 4. and 5. and as is otherwise provided for
8 in general law. The separate legal entity ~~and~~ may not provide
9 utility services within the service area of an existing
10 utility system unless it has received the consent of the
11 utility.

12 2. For purposes of this paragraph, the term "utility"
13 means a water or wastewater utility and includes every person,
14 separate legal entity, lessee, trustee, or receiver owning,
15 operating, managing, or controlling a system, or proposing
16 construction of a system, who is providing, or proposes to
17 provide, water or wastewater service to the public for
18 compensation. For purposes of this paragraph, the term
19 "system" means each separate water or wastewater facility
20 providing service. For purposes of this paragraph, the term
21 "host government" means either the governing body of the
22 county, if the largest number of equivalent residential
23 connections currently served by a system of the utility is
24 located in the unincorporated area, or the governing body of a
25 municipality, if the largest number of equivalent residential
26 connections currently served by a system of the utility is
27 located within that municipality's boundaries. For purposes of
28 this paragraph, the term "separate legal entity" may mean any
29 entity created by interlocal agreement the membership of which
30 is limited to two or more municipalities or counties of the
31 state, but which entity is legally separate and apart from any

1 of its member governments. A separate legal entity that seeks
2 to acquire any utility must notify the host government in
3 writing by certified mail about the contemplated acquisition
4 not less than 90 days before any proposed transfer of
5 ownership, use, or possession of any utility assets by such
6 separate legal entity. The potential acquisition notice must
7 be provided to the legislative head of the governing body of
8 the host government and to its chief administrative officer
9 and must provide the name and address of a contact person for
10 the separate legal entity and information identified in s.
11 367.071(4)(a) concerning the contemplated acquisition.

12 3. Within 90 days following receipt of the notice, the
13 host government may adopt a resolution to become a member of
14 the separate legal entity; adopt a resolution to approve the
15 utility acquisition; adopt a resolution to prohibit the
16 utility acquisition by the separate legal entity if the host
17 government determines that the proposed acquisition is not in
18 the public interest; request in writing an automatic 45-day
19 extension of the 90-day period in order to allow sufficient
20 time for the host government to evaluate the proposed
21 acquisition; or take no action to agenda the proposed
22 acquisition for discussion at a public meeting, which shall be
23 construed as denial of the proposed acquisition. If a host
24 government adopts a prohibition resolution, the separate legal
25 entity may not acquire the utility within that host
26 government's territory without specific consent of the host
27 government by future resolution. If a host government adopts a
28 membership resolution, the separate legal entity must accept
29 the host government as a member before any transfer of
30 ownership, use, or possession of the utility or the utility
31 facilities on the same basis as its existing members. If a

1 host government does not adopt a prohibition resolution or an
2 approval resolution, does not provide a written request for an
3 extension of the 90-day notice period, and takes no action to
4 initiate judicial proceedings regarding the proposed
5 acquisition, the separate legal entity may proceed to acquire
6 the utility after the 90-day notice period without further
7 notice, except as otherwise agreed upon by the separate legal
8 entity and the host government. In utility acquisitions
9 involving two or more host governments, the Public Service
10 Commission shall consider whether the sale, assignment, or
11 transfer of the utility is in the public interest pursuant to
12 the provisions of s. 367.071(1).

13 4. In addition to the host government's right to
14 review as fair and reasonable the rates, charges, customer
15 classifications, and terms of service that will be in place at
16 the time of acquisition, the host government has the right to
17 review and approve as fair and reasonable any later changes
18 proposed by the separate legal entity to the rates, charges,
19 customer classifications, and terms of service, before
20 adoption by the separate legal entity. In addition, the host
21 government has the right to review and approve any changes to
22 the financing of such facilities which may result in increased
23 costs to customers. Such right of review and approval by the
24 host government is subject to the obligation of the separate
25 legal entity to establish rates and charges that comply with
26 the requirements contained in any resolution or trust
27 agreement relating to the issuance of bonds to acquire and
28 improve the affected utility, and such right does not affect
29 the obligation of the separate legal entity to set rates at a
30 level sufficient to pay debt service on its obligations issued
31 in relation to the host government utility. In order to

1 facilitate review of proposed changes by such host government,
2 the separate legal entity must notify the host government in
3 writing by certified mail about the proposed changes not less
4 than 90 days before it implements any changes. The notice of
5 proposed changes must be provided to the legislative head of
6 the governing body of each host government and to its chief
7 administrative officer and must provide the name and address
8 of a contact person for the separate legal entity and
9 information identified in s. 367.081(2)(a)1. as it applies to
10 publicly owned utilities about the proposed changes. If after
11 review the host government believes that the proposed changes
12 are in the public interest, the host government may pass a
13 resolution approving the proposed changes. If, after review,
14 the host government believes that the proposed changes are not
15 in the public interest, the host government may enter into
16 negotiation with the separate legal entity to resolve those
17 concerns. If no agreement is reached within 30 days after the
18 host government's determination that the proposed changes are
19 not in the public interest, the host government may request
20 and, if requested, shall receive binding arbitration services
21 through the Public Service Commission to resolve the dispute
22 with the separate legal entity. The commission shall develop
23 and adopt administrative rules governing the arbitration
24 process and establishing fees for this dispute-resolution
25 service.

26 5. After the acquisition or construction of any
27 utility systems by a separate legal entity created under this
28 subsection, revenues or any other income may not be
29 transferred or paid to a member of a separate legal entity, or
30 to any other county or municipality, from user fees or other
31 charges or revenues generated from customers that are not

1 physically located within the jurisdictional or service
2 delivery boundaries of the member, county, or municipality
3 receiving the transfer or payment. Any transfer or payment to
4 a member or other local government must be solely from user
5 fees or other charges or revenues generated from customers
6 that are physically located within the jurisdictional or
7 service delivery boundaries of the member or local government
8 receiving the transfer or payment.

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

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

1 on behalf of the public agencies that are members of the
2 entity.

3 8.2. Except as limited by the terms and conditions of
4 the utility acquisition agreement, as approved by the
5 applicable host government, any entity created under this
6 section may also issue bond anticipation notes in connection
7 with the authorization, issuance, and sale of bonds. The bonds
8 may be issued as serial bonds or as term bonds or both. Any
9 entity may issue capital appreciation bonds or variable rate
10 bonds. Any bonds, notes, or other obligations must be
11 authorized by resolution of the governing body of the entity
12 and bear the date or dates; mature at the time or times, not
13 exceeding 40 years from their respective dates; bear interest
14 at the rate or rates; be payable at the time or times; be in
15 the denomination; be in the form; carry the registration
16 privileges; be executed in the manner; be payable from the
17 sources and in the medium or payment and at the place; and be
18 subject to the terms of redemption, including redemption prior
19 to maturity, as the resolution may provide. If any officer
20 whose signature, or a facsimile of whose signature, appears on
21 any bonds, notes, or other obligations ceases to be an officer
22 before the delivery of the bonds, notes, or other obligations,
23 the signature or facsimile is valid and sufficient for all
24 purposes as if he or she had remained in office until the
25 delivery. The bonds, notes, or other obligations may be sold
26 at public or private sale for such price as the governing body
27 of the entity shall determine. Pending preparation of the
28 definitive bonds, the entity may issue interim certificates,
29 which shall be exchanged for the definitive bonds. The bonds
30 may be secured by a form of credit enhancement, if any, as the
31 entity deems appropriate. The bonds may be secured by an

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

18 9.3- Bonds, notes, or other obligations issued under
19 this paragraph ~~subparagraph 1-~~ may be validated as provided in
20 chapter 75. The complaint in any action to validate the bonds,
21 notes, or other obligations must be filed only in the Circuit
22 Court for Leon County. The notice required to be published by
23 s. 75.06 must be published in Leon County and in each county
24 that is a member of the entity issuing the bonds, notes, or
25 other obligations, or in which a member of the entity is
26 located, and the complaint and order of the circuit court must
27 be served only on the State Attorney of the Second Judicial
28 Circuit and on the state attorney of each circuit in each
29 county that is a member of the entity issuing the bonds,
30 notes, or other obligations or in which a member of the entity
31

1 is located. Section 75.04(2) does not apply to a complaint for
2 validation brought by the legal entity.

3 ~~10.4.~~ The accomplishment of the authorized purposes of
4 a legal entity created under this paragraph is in all respects
5 for the benefit of the people of the state, for the increase
6 of their commerce and prosperity, and for the improvement of
7 their health and living conditions. Since the legal entity
8 will perform essential governmental functions in accomplishing
9 its purposes, the legal entity is not required to pay any
10 taxes or assessments of any kind whatsoever upon any property
11 acquired or used by it for such purposes or upon any revenues
12 at any time received by it. The bonds, notes, and other
13 obligations of an entity, their transfer and the income
14 therefrom, including any profits made on the sale thereof, are
15 at all times free from taxation of any kind by the state or by
16 any political subdivision or other agency or instrumentality
17 thereof. The exemption granted in this subparagraph is not
18 applicable to any tax imposed by chapter 220 on interest,
19 income, or profits on debt obligations owned by corporations.

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

22 120.52 Definitions.--As used in this act:

23 (1) "Agency" means:

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

26 (b) Each:

27 1. State officer and state department, and each
28 departmental unit described in s. 20.04.

29 2. Authority, including a regional water supply
30 authority.

31 3. Board.

1 4. Commission, including the Commission on Ethics and
2 the Fish and Wildlife Conservation Commission when acting
3 pursuant to statutory authority derived from the Legislature.

4 5. Regional planning agency.

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

7 7. Educational units.

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

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

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15 This definition does not include any legal entity or agency
16 created in whole or in part pursuant to chapter 361, part II,
17 an expressway authority pursuant to chapter 348, any legal or
18 administrative entity created by an interlocal agreement
19 pursuant to s. 163.01(7), except those created pursuant to s.
20 163.01(7)(g)1., unless any party to such agreement is
21 otherwise an agency as defined in this subsection, or any
22 multicounty special district with a majority of its governing
23 board comprised of elected persons; however, this definition
24 shall include a regional water supply authority.

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

27 367.021 Definitions.--As used in this chapter, the
28 following words or terms shall have the meanings indicated:

29 (7) "Governmental authority" means a political
30 subdivision, as defined by s. 1.01(8), a regional water supply
31 authority created pursuant to s. 373.1962, or a nonprofit

1 corporation formed for the purpose of acting on behalf of a
2 political subdivision with respect to a water or wastewater
3 facility; however, this definition shall exclude a separate
4 legal entity created pursuant to s. 163.01(7)(g)1.

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

7 367.071 Sale, assignment, or transfer of certificate
8 of authorization, facilities, or control.--

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

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

23 (a) The sale of facilities, in whole or part, to a
24 governmental authority, as defined in s. 367.021(7), shall be
25 approved as a matter of right; however, the governmental
26 authority shall, prior to taking any official action, obtain
27 from the utility or commission with respect to the facilities
28 to be sold the most recent available income and expense
29 statement, balance sheet, and statement of rate base for
30 regulatory purposes and contributions-in-aid-of-construction.
31 Any request for rate relief pending before the commission at

1 the time of sale is deemed to have been withdrawn. Interim
2 rates, if previously approved by the commission, must be
3 discontinued, and any money collected pursuant to interim rate
4 relief must be refunded to the customers of the utility with
5 interest.

6 (b) When paragraph (a) does not apply, the commission
7 shall amend the certificate of authorization as necessary to
8 reflect the change resulting from the sale, assignment, or
9 transfer.

10 Section 5. If any provision of this act or the
11 application thereof to any person or circumstance is held
12 invalid, the invalidity does not affect other provisions or
13 applications of this act which can be given effect without the
14 invalid provision or application, and to this end the
15 provisions of this act are declared severable.

16 Section 6. Private property rights and regional
17 reservoirs.--

18 (1) The Legislature finds that construction of a
19 regional reservoir designed to store more than 10 billion
20 gallons of water may inordinately burden nearby real property
21 because of the proximity of the reservoir and may result in a
22 loss of value for the property owner. Therefore, a regional
23 water supply authority, serving three or fewer counties, that
24 is authorized to construct, operate, and maintain such a
25 regional reservoir shall be deemed a governmental entity under
26 section 70.001, Florida Statutes, the Bert J. Harris, Jr.,
27 Private Property Rights Protection Act, for purposes of this
28 section.

29 (2) This section provides a cause of action for the
30 actions of a regional water supply authority, in siting and
31 constructing a reservoir as described in subsection (1), that

1 may not rise to the level of a taking under the State
2 Constitution or the United States Constitution. This section
3 may not necessarily be construed under the case law regarding
4 takings if the action of a regional water supply authority
5 does not rise to the level of a taking. The provisions of this
6 section are cumulative and do not abrogate any other remedy
7 lawfully available, including any remedy lawfully available
8 for the actions of a regional water supply authority that rise
9 to the level of a taking. However, a regional water supply
10 authority may not be liable more than once for compensation
11 due to an action of the regional water supply authority that
12 results in a loss of value for a subject real property.

13 (3) Each owner of real property located within 10,000
14 feet of the the center of the footprint of a regional
15 reservoir, as described in subsection (1), or 5,500 feet from
16 the exterior of the berm of such reservoir, may present a
17 claim for compensation in writing to the head of the regional
18 water supply authority on or before December 31, 2004, for a
19 loss in property value resulting from the proximity of the
20 reservoir. For each claim presented under this section,
21 section 70.001, Florida Statutes, applies, except when there
22 is conflict with this section, the provisions of this section
23 shall govern.

24 (a) The property owner must submit along with the
25 claim a bona fide, valid appraisal that supports the claim and
26 demonstrates the loss in fair market value to the real
27 property.

28 (b) A claim under this section shall be presented only
29 to the regional water supply authority that is authorized to
30 construct, operate, and maintain the reservoir.

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1 (4) The Legislature recognizes that construction and
2 maintenance of a regional reservoir may not necessarily
3 interfere with allowable uses of real property near the
4 reservoir. However, the siting and construction of the
5 reservoir may result in an actual loss to the fair market
6 value of real property located within 10,000 feet of the
7 center of the footprint of the reservoir, or 5,500 feet from
8 the exterior of the berm, because of the proximity of the
9 reservoir. Therefore, any offer of compensation by the
10 regional water supply authority shall be based solely on the
11 loss of value for the property owner as a result of the
12 proximity of the reservoir and not on the effects the
13 reservoir has on existing uses or on a vested right to a
14 specific use of real property.

15 (a) Notwithstanding section 70.001, Florida Statutes,
16 the regional water supply authority to whom a claim is
17 presented shall, not later than 180 days after receiving such
18 claim:

19 1. Make a written offer to purchase the real property
20 if there is more than a 50-percent loss in value to the real
21 property as a result of the proximity of the reservoir and if
22 the property owner is a willing seller;

23 2. Make a written offer to purchase an interest in
24 rights of use which may become transferable development rights
25 to be held, sold, or otherwise disposed of by the regional
26 water supply authority; or

27 3. Terminate negotiations.

28 (b) An offer by the regional water supply authority to
29 purchase the property in fee or purchase an interest in rights
30 of use under this section shall cover the cost of the
31 appraisal required in subsection (3).

1 (5) During the 180-day period, unless the property
2 owner accepts a written offer for purchase pursuant to
3 subparagraph (4)(a)1. or 2., the regional water supply
4 authority shall issue a final decision stating that:

5 (a) The real property has a loss in value due to an
6 inordinate burden on the property resulting from the proximity
7 of the reservoir and the regional water supply authority and
8 property owner cannot reach agreement on the amount of
9 compensation; or

10 (b) The property owner has failed to establish a basis
11 for relief under the provisions of this section and section
12 70.001, Florida Statutes.

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14 Failure of the regional water supply authority to issue a
15 final decision as required by this subsection shall cause the
16 written offer or termination of negotiations required in
17 subsection (4) to operate as a final decision. As a matter of
18 law, this final decision constitutes the last prerequisite to
19 judicial review of the merits for the purposes of the judicial
20 proceeding provided for in section 70.001, Florida Statutes.

21 (6) The circuit court, for purposes of this section,
22 shall determine whether, considering the written offer and
23 final decision, the regional water supply authority has
24 inordinately burdened the subject real property. Following a
25 determination that the regional water supply authority has
26 inordinately burdened the real property, the court shall
27 impanel a jury to determine the total amount of compensation
28 to the property owner for the loss in value due to the
29 inordinate burden to the subject real property.

30 (7) Pursuant to section 70.001, Florida Statutes, the
31 court may award reasonable costs and attorney's fees and the

1 court shall determine the amount. If the court awards the
2 property owner reasonable costs and attorney's fees, the costs
3 shall include the cost of the appraisal required in subsection
4 (3).

5 (8) This section shall take effect July 1, 2003, and
6 is repealed effective January 1, 2005. However, the repeal of
7 this section shall not affect a claim filed on or before
8 December 31, 2004.

9 Section 7. Except as otherwise expressly provided in
10 this act, this act shall take effect upon becoming a law and
11 shall apply to all contracts pending on that date.

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