

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representatives Attkisson and Russell offered the following:

Amendment (with title amendment)

Remove lines 1175 and 176, and insert:

Section 29. Paragraph (g) of subsection (7) of section 163.01, Florida Statutes, is amended to read:

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

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

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28 members of the entity. Notwithstanding s. 367.171(7), any
29 separate legal entity created under this paragraph is not
30 subject to Public Service Commission jurisdiction, except when a
31 host government specifically requests binding arbitration
32 services through the commission under subparagraphs 4. and 5.
33 and as is otherwise provided for in general law. The separate
34 legal entity and may not provide utility services within the
35 service area of an existing utility system unless it has
36 received the consent of the utility.

37 2. For purposes of this paragraph, the term "utility"
38 means a water or wastewater utility and includes every person,
39 separate legal entity, lessee, trustee, or receiver owning,
40 operating, managing, or controlling a system, or proposing
41 construction of a system, who is providing, or proposes to
42 provide, water or wastewater service to the public for
43 compensation. For purposes of this paragraph, the term "system"
44 means each separate water or wastewater facility providing
45 service. For purposes of this paragraph, the term "host
46 government" means either the governing body of the county, if
47 the largest number of equivalent residential connections
48 currently served by a system of the utility is located in the
49 unincorporated area, or the governing body of a municipality, if
50 the largest number of equivalent residential connections
51 currently served by a system of the utility is located within
52 that municipality's boundaries. For purposes of this paragraph,
53 the term "separate legal entity" may mean any entity created by
54 interlocal agreement the membership of which is limited to two
55 or more municipalities or counties of the state, but which
56 entity is legally separate and apart from any of its member

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57 governments. A separate legal entity that seeks to acquire any
58 utility must notify the host government in writing by certified
59 mail about the contemplated acquisition not less than 90 days
60 before any proposed transfer of ownership, use, or possession of
61 any utility assets by such separate legal entity. The potential
62 acquisition notice must be provided to the legislative head of
63 the governing body of the host government and to its chief
64 administrative officer and must provide the name and address of
65 a contact person for the separate legal entity and information
66 identified in s. 367.071(4)(a) concerning the contemplated
67 acquisition.

68 3. Within 90 days following receipt of the notice, the
69 host government may adopt a resolution to become a member of the
70 separate legal entity; adopt a resolution to approve the utility
71 acquisition; adopt a resolution to prohibit the utility
72 acquisition by the separate legal entity if the host government
73 determines that the proposed acquisition is not in the public
74 interest; request in writing an automatic 45-day extension of
75 the 90-day period in order to allow sufficient time for the host
76 government to evaluate the proposed acquisition; or take no
77 action to agenda the proposed acquisition for discussion at a
78 public meeting, which shall be construed as denial of the
79 proposed acquisition. If a host government adopts a prohibition
80 resolution, the separate legal entity may not acquire the
81 utility within that host government's territory without specific
82 consent of the host government by future resolution. If a host
83 government adopts a membership resolution, the separate legal
84 entity must accept the host government as a member before any
85 transfer of ownership, use, or possession of the utility or the

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86 utility facilities on the same basis as its existing members. If
87 a host government does not adopt a prohibition resolution or an
88 approval resolution, does not provide a written request for an
89 extension of the 90-day notice period, and takes no action to
90 initiate judicial proceedings regarding the proposed
91 acquisition, the separate legal entity may proceed to acquire
92 the utility after the 90-day notice period without further
93 notice, except as otherwise agreed upon by the separate legal
94 entity and the host government. In utility acquisitions
95 involving two or more host governments, the Public Service
96 Commission shall consider whether the sale, assignment, or
97 transfer of the utility is in the public interest pursuant to
98 the provisions of s. 367.071(1).

99 4. In addition to the host government's right to review as
100 fair and reasonable the rates, charges, customer
101 classifications, and terms of service that will be in place at
102 the time of acquisition, the host government has the right to
103 review and approve as fair and reasonable any later changes
104 proposed by the separate legal entity to the rates, charges,
105 customer classifications, and terms of service, before adoption
106 by the separate legal entity. In addition, the host government
107 has the right to review and approve any changes to the financing
108 of such facilities which may result in increased costs to
109 customers. Such right of review and approval by the host
110 government is subject to the obligation of the separate legal
111 entity to establish rates and charges that comply with the
112 requirements contained in any resolution or trust agreement
113 relating to the issuance of bonds to acquire and improve the
114 affected utility, and such right does not affect the obligation

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115 of the separate legal entity to set rates at a level sufficient
116 to pay debt service on its obligations issued in relation to the
117 host government utility. In order to facilitate review of
118 proposed changes by such host government, the separate legal
119 entity must notify the host government in writing by certified
120 mail about the proposed changes not less than 90 days before it
121 implements any changes. The notice of proposed changes must be
122 provided to the legislative head of the governing body of each
123 host government and to its chief administrative officer and must
124 provide the name and address of a contact person for the
125 separate legal entity and information identified in s.
126 367.081(2)(a)1. as it applies to publicly owned utilities about
127 the proposed changes. If after review the host government
128 believes that the proposed changes are in the public interest,
129 the host government may pass a resolution approving the proposed
130 changes. If, after review, the host government believes that the
131 proposed changes are not in the public interest, the host
132 government may enter into negotiation with the separate legal
133 entity to resolve those concerns. If no agreement is reached
134 within 30 days after the host government's determination that
135 the proposed changes are not in the public interest, the host
136 government may request and, if requested, shall receive binding
137 arbitration services through the Public Service Commission to
138 resolve the dispute with the separate legal entity. The
139 commission shall develop and adopt administrative rules
140 governing the arbitration process and establishing fees for this
141 dispute-resolution service.

142 5. After the acquisition or construction of any utility
143 systems by a separate legal entity created under this

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144 subsection, revenues or any other income may not be transferred
145 or paid to a member of a separate legal entity, or to any other
146 county or municipality, from user fees or other charges or
147 revenues generated from customers that are not physically
148 located within the jurisdictional or service delivery boundaries
149 of the member, county, or municipality receiving the transfer or
150 payment. Any transfer or payment to a member or other local
151 government must be solely from user fees or other charges or
152 revenues generated from customers that are physically located
153 within the jurisdictional or service delivery boundaries of the
154 member or local government receiving the transfer or payment.

155 6. The host government is guaranteed the right to acquire
156 any utility or utility system that it hosts owned by the
157 separate legal entity. In those instances when the separate
158 legal entity and the host government cannot agree on the terms
159 and conditions of the acquisition, the host government may
160 request and, if requested, shall receive binding arbitration
161 services through the Public Service Commission to resolve the
162 disputed acquisition terms. The commission shall develop and
163 adopt administrative rules governing the arbitration process and
164 establishing the fees for these services. In developing and
165 adopting its rules governing the acquisition price for a given
166 host government to acquire the utility or utility system located
167 within its jurisdiction, the Public Service Commission shall, to
168 the greatest extent possible, base the acquisition price on the
169 same percentage to the total bonded indebtedness of the separate
170 legal entity upon acquiring the utility as the acquired system's
171 rate base was to the utility's total rate base at the time
172 transferred from a regulated utility to the separate legal

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173 entity. This paragraph is an alternative provision otherwise
174 provided by law as authorized in s. 4, Art. VIII of the State
175 Constitution for any transfer of power as a result of an
176 acquisition of a utility by a separate legal entity from a
177 municipality, county, or special district.

178 7. The entity may finance or refinance the acquisition,
179 construction, expansion, and improvement of such facilities
180 relating to a governmental function or purpose through the
181 issuance of its bonds, notes, or other obligations under this
182 section or as otherwise authorized by law. Except as limited by
183 the terms and conditions of the utility acquisition agreement,
184 as approved by the applicable host government, the entity has
185 all the powers provided by the interlocal agreement under which
186 it is created or which are necessary to finance, own, operate,
187 or manage the public facility, including, without limitation,
188 the power to establish rates, charges, and fees for products or
189 services provided by it, the power to levy special assessments,
190 the power to sell or finance all or a portion of such facility,
191 and the power to contract with a public or private entity to
192 manage and operate such facilities or to provide or receive
193 facilities, services, or products. Except as may be limited by
194 the interlocal agreement under which the entity is created, all
195 of the privileges, benefits, powers, and terms of s. 125.01,
196 relating to counties, and s. 166.021, relating to
197 municipalities, are fully applicable to the entity. However,
198 neither the entity nor any of its members on behalf of the
199 entity may exercise the power of eminent domain over the
200 facilities or property of any existing water or wastewater plant
201 utility system, nor may the entity acquire title to any water or

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202 wastewater plant utility facilities, other facilities, or
203 property which was acquired by the use of eminent domain after
204 the effective date of this act. Bonds, notes, and other
205 obligations issued by the entity are issued on behalf of the
206 public agencies that are members of the entity.

207 8.2- Except as limited by the terms and conditions of the
208 utility acquisition agreement, as approved by the applicable
209 host government, any entity created under this section may also
210 issue bond anticipation notes in connection with the
211 authorization, issuance, and sale of bonds. The bonds may be
212 issued as serial bonds or as term bonds or both. Any entity may
213 issue capital appreciation bonds or variable rate bonds. Any
214 bonds, notes, or other obligations must be authorized by
215 resolution of the governing body of the entity and bear the date
216 or dates; mature at the time or times, not exceeding 40 years
217 from their respective dates; bear interest at the rate or rates;
218 be payable at the time or times; be in the denomination; be in
219 the form; carry the registration privileges; be executed in the
220 manner; be payable from the sources and in the medium or payment
221 and at the place; and be subject to the terms of redemption,
222 including redemption prior to maturity, as the resolution may
223 provide. If any officer whose signature, or a facsimile of whose
224 signature, appears on any bonds, notes, or other obligations
225 ceases to be an officer before the delivery of the bonds, notes,
226 or other obligations, the signature or facsimile is valid and
227 sufficient for all purposes as if he or she had remained in
228 office until the delivery. The bonds, notes, or other
229 obligations may be sold at public or private sale for such price
230 as the governing body of the entity shall determine. Pending

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231 preparation of the definitive bonds, the entity may issue
232 interim certificates, which shall be exchanged for the
233 definitive bonds. The bonds may be secured by a form of credit
234 enhancement, if any, as the entity deems appropriate. The bonds
235 may be secured by an indenture of trust or trust agreement. In
236 addition, the governing body of the legal entity may delegate,
237 to an officer, official, or agent of the legal entity as the
238 governing body of the legal entity may select, the power to
239 determine the time; manner of sale, public or private;
240 maturities; rate of interest, which may be fixed or may vary at
241 the time and in accordance with a specified formula or method of
242 determination; and other terms and conditions as may be deemed
243 appropriate by the officer, official, or agent so designated by
244 the governing body of the legal entity. However, the amount and
245 maturity of the bonds, notes, or other obligations and the
246 interest rate of the bonds, notes, or other obligations must be
247 within the limits prescribed by the governing body of the legal
248 entity and its resolution delegating to an officer, official, or
249 agent the power to authorize the issuance and sale of the bonds,
250 notes, or other obligations.

251 9.3. Bonds, notes, or other obligations issued under this
252 paragraph ~~subparagraph 1.~~ may be validated as provided in
253 chapter 75. The complaint in any action to validate the bonds,
254 notes, or other obligations must be filed only in the Circuit
255 Court for Leon County. The notice required to be published by s.
256 75.06 must be published in Leon County and in each county that
257 is a member of the entity issuing the bonds, notes, or other
258 obligations, or in which a member of the entity is located, and
259 the complaint and order of the circuit court must be served only

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260 on the State Attorney of the Second Judicial Circuit and on the
261 state attorney of each circuit in each county that is a member
262 of the entity issuing the bonds, notes, or other obligations or
263 in which a member of the entity is located. Section 75.04(2)
264 does not apply to a complaint for validation brought by the
265 legal entity.

266 ~~10.4.~~ The accomplishment of the authorized purposes of a
267 legal entity created under this paragraph is in all respects for
268 the benefit of the people of the state, for the increase of
269 their commerce and prosperity, and for the improvement of their
270 health and living conditions. Since the legal entity will
271 perform essential governmental functions in accomplishing its
272 purposes, the legal entity is not required to pay any taxes or
273 assessments of any kind whatsoever upon any property acquired or
274 used by it for such purposes or upon any revenues at any time
275 received by it. The bonds, notes, and other obligations of an
276 entity, their transfer and the income therefrom, including any
277 profits made on the sale thereof, are at all times free from
278 taxation of any kind by the state or by any political
279 subdivision or other agency or instrumentality thereof. The
280 exemption granted in this subparagraph is not applicable to any
281 tax imposed by chapter 220 on interest, income, or profits on
282 debt obligations owned by corporations.

283 Section 30. Subsection (1) of section 120.52, Florida
284 Statutes, is amended to read:

285 120.52 Definitions.--As used in this act:

286 (1) "Agency" means:

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

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289 (b) Each:

- 290 1. State officer and state department, and each
291 departmental unit described in s. 20.04.
- 292 2. Authority, including a regional water supply authority.
- 293 3. Board.
- 294 4. Commission, including the Commission on Ethics and the
295 Fish and Wildlife Conservation Commission when acting pursuant
296 to statutory authority derived from the Legislature.
- 297 5. Regional planning agency.
- 298 6. Multicounty special district with a majority of its
299 governing board comprised of nonelected persons.
- 300 7. Educational units.
- 301 8. Entity described in chapters 163, 373, 380, and 582 and
302 s. 186.504.

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

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309 This definition does not include any legal entity or agency
310 created in whole or in part pursuant to chapter 361, part II, an
311 expressway authority pursuant to chapter 348, any legal or
312 administrative entity created by an interlocal agreement
313 pursuant to s. 163.01(7), except those created pursuant to s.
314 163.01(7)(g)1., unless any party to such agreement is otherwise
315 an agency as defined in this subsection, or any multicounty
316 special district with a majority of its governing board

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317 comprised of elected persons; however, this definition shall
318 include a regional water supply authority.

319 Section 31. Subsection (7) of section 367.021, Florida
320 Statutes, is amended to read:

321 367.021 Definitions.--As used in this chapter, the
322 following words or terms shall have the meanings indicated:

323 (7) "Governmental authority" means a political
324 subdivision, as defined by s. 1.01(8), a regional water supply
325 authority created pursuant to s. 373.1962, or a nonprofit
326 corporation formed for the purpose of acting on behalf of a
327 political subdivision with respect to a water or wastewater
328 facility; however, this definition shall exclude a separate
329 legal entity created pursuant to s. 163.01(7)(g)1.

330 Section 32. Subsections (1) and (4) of section 367.071,
331 Florida Statutes, are amended to read:

332 367.071 Sale, assignment, or transfer of certificate of
333 authorization, facilities, or control.--

334 (1) A No utility may not shall sell, assign, or transfer
335 its certificate of authorization, facilities or any portion
336 thereof, or majority organizational control without
337 determination and approval of the commission that the proposed
338 sale, assignment, or transfer is in the public interest and that
339 the buyer, assignee, or transferee will fulfill the commitments,
340 obligations, and representations of the utility. ~~However, a~~
341 ~~sale, assignment, or transfer of its certificate of~~
342 ~~authorization, facilities or any portion thereof, or majority~~
343 ~~organizational control may occur prior to commission approval if~~
344 ~~the contract for sale, assignment, or transfer is made~~
345 ~~contingent upon commission approval.~~

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346 (4) An application shall be disposed of as provided in s.
347 367.045, except that:

348 (a) The sale of facilities, in whole or part, to a
349 governmental authority, as defined in s. 367.021(7), shall be
350 approved as a matter of right; however, the governmental
351 authority shall, prior to taking any official action, obtain
352 from the utility or commission with respect to the facilities to
353 be sold the most recent available income and expense statement,
354 balance sheet, and statement of rate base for regulatory
355 purposes and contributions-in-aid-of-construction. Any request
356 for rate relief pending before the commission at the time of
357 sale is deemed to have been withdrawn. Interim rates, if
358 previously approved by the commission, must be discontinued, and
359 any money collected pursuant to interim rate relief must be
360 refunded to the customers of the utility with interest.

361 (b) When paragraph (a) does not apply, the commission
362 shall amend the certificate of authorization as necessary to
363 reflect the change resulting from the sale, assignment, or
364 transfer.

365 Section 33. If any provision of this act or the
366 application thereof to any person or circumstance is held
367 invalid, the invalidity does not affect other provisions or
368 applications of this act which can be given effect without the
369 invalid provision or application, and to this end the provisions
370 of this act are declared severable.

371 Section 34. Private property rights and regional
372 reservoirs.--

373 (1) The Legislature finds that construction of a regional
374 reservoir designed to store more than 10 billion gallons of

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375 water may inordinately burden nearby real property because of
376 the proximity of the reservoir and may result in a loss of value
377 for the property owner. Therefore, a regional water supply
378 authority, serving three or fewer counties, that is authorized
379 to construct, operate, and maintain such a regional reservoir
380 shall be deemed a governmental entity under section 70.001,
381 Florida Statutes, the Bert J. Harris, Jr., Private Property
382 Rights Protection Act, for purposes of this section.

383 (2) This section provides a cause of action for the
384 actions of a regional water supply authority, in siting and
385 constructing a reservoir as described in subsection (1), that
386 may not rise to the level of a taking under the State
387 Constitution or the United States Constitution. This section may
388 not necessarily be construed under the case law regarding
389 takings if the action of a regional water supply authority does
390 not rise to the level of a taking. The provisions of this
391 section are cumulative and do not abrogate any other remedy
392 lawfully available, including any remedy lawfully available for
393 the actions of a regional water supply authority that rise to
394 the level of a taking. However, a regional water supply
395 authority may not be liable more than once for compensation due
396 to an action of the regional water supply authority that results
397 in a loss of value for a subject real property.

398 (3) Each owner of real property located within 10,000 feet
399 of the the center of the footprint of a regional reservoir, as
400 described in subsection(1), or 5,500 feet from the exterior of
401 the berm of such reservoir, may present a claim for compensation
402 in writing to the head of the regional water supply authority on
403 or before December 31, 2004, for a loss in property value

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404 resulting from the proximity of the reservoir. For each claim
405 presented under this section, section 70.001, Florida Statutes,
406 applies, except when there is conflict with this section, the
407 provisions of this section shall govern.

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

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

414 (4) The Legislature recognizes that construction and
415 maintenance of a regional reservoir may not necessarily
416 interfere with allowable uses of real property near the
417 reservoir. However, the siting and construction of the reservoir
418 may result in an actual loss to the fair market value of real
419 property located within 10,000 feet of the center of the
420 footprint of the reservoir, or 5,500 feet from the exterior of
421 the berm, because of the proximity of the reservoir. Therefore,
422 any offer of compensation by the regional water supply authority
423 shall be based solely on the loss of value for the property
424 owner as a result of the proximity of the reservoir and not on
425 the effects the reservoir has on existing uses or on a vested
426 right to a specific use of real property.

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

430 1. Make a written offer to purchase the real property if
431 there is more than a 50-percent loss in value to the real

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432 property as a result of the proximity of the reservoir and if
433 the property owner is a willing seller;

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

438 3. Terminate negotiations.

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

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

447 (a) The real property has a loss in value due to an
448 inordinate burden on the property resulting from the proximity
449 of the reservoir and the regional water supply authority and
450 property owner cannot reach agreement on the amount of
451 compensation; or

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

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457 Failure of the regional water supply authority to issue a final
458 decision as required by this subsection shall cause the written
459 offer or termination of negotiations required in subsection (4)
460 to operate as a final decision. As a matter of law, this final

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461 decision constitutes the last prerequisite to judicial review of
462 the merits for the purposes of the judicial proceeding provided
463 for in section 70.001, Florida Statutes.

464 (6) The circuit court, for purposes of this section, shall
465 determine whether, considering the written offer and final
466 decision, the regional water supply authority has inordinately
467 burdened the subject real property. Following a determination
468 that the regional water supply authority has inordinately
469 burdened the real property, the court shall impanel a jury to
470 determine the total amount of compensation to the property owner
471 for the loss in value due to the inordinate burden to the
472 subject real property.

473 (7) Pursuant to section 70.001, Florida Statutes, the
474 court may award reasonable costs and attorney's fees and the
475 court shall determine the amount. If the court awards the
476 property owner reasonable costs and attorney's fees, the costs
477 shall include the cost of the appraisal required in
478 subsection(3).

479 (8) This section shall take effect July 1, 2003, and is
480 repealed effective January 1, 2005. However, the repeal of this
481 section shall not affect a claim filed on or before December 31,
482 2004.

483 Section 35. Except as otherwise expressly provided in this
484 act, this act shall take effect upon becoming a law and shall
485 apply to all contracts pending on that date.

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488 ===== T I T L E A M E N D M E N T =====

489 Remove line(s) 109, and insert:

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490 certain fees; amending s. 163.01, F.S.; providing applicability
491 of provisions relating to ownership and operation of utilities
492 by entities composed of municipalities and counties; prescribing
493 powers of counties and specified municipalities with respect to
494 acquisition of water utilities and wastewater utilities by
495 separate legal entities composed of municipalities and counties;
496 authorizing the Public Service Commission to review the
497 acquisition of a utility by two or more host governments;
498 providing for a binding arbitration process under the Public
499 Service Commission to resolve certain disputes relating to
500 utility acquisition; authorizing the commission to adopt rules;
501 requiring the Public Service Commission to establish rules that
502 base the acquisition price for a host government to acquire a
503 utility on certain information; amending s. 120.52, F.S.;
504 deleting an exception from the requirements of ch. 120, F.S.,
505 for an entity created under s. 163.01(7)(g)1., F.S.; amending s.
506 367.021, F.S.; excluding an entity created under s.
507 163.01(7)(g)1., F.S., from the definition of "governmental
508 authority"; amending s. 367.071, F.S.; deleting a provision
509 authorizing a utility to be sold or transferred prior to
510 approval of the Public Service Commission with a contingency
511 clause in the contract; providing severability; providing
512 legislative findings with respect to loss of property values due
513 to the proximity of a regional water reservoir; authorizing a
514 cause of action for a property owner; specifying a period during
515 which a property owner may present a claim for compensation to
516 the regional water supply authority that constructs, operates,
517 and maintains the reservoir; providing requirements for the
518 offer of compensation by a regional water supply authority;

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519 providing for judicial review under the Bert J. Harris, Jr.,
520 Private Property Rights Protection Act; providing for an award
521 of costs and attorney's fees; providing for future repeal of the
522 section; providing for applicability; providing effective dates.