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A bill to be entitled

An act relating to the Florida Interlocal Cooperation Act of 1969; amending s. 163.01, F.S.; requiring notification of the host government if a separate legal entity seeks to acquire public facilities serving populations outside the jurisdiction of members of the separate legal entity; providing for the host government to respond within a specified period; providing that the host government may not prohibit such acquisition if it fails to respond within the specified period; defining the governing body constituting the host government for purposes of the act; authorizing the host government to reserve the right to review and approve rates, charges, and customer classifications; providing certain limitations; providing for retroactive application; providing an effective date.

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

Section 1. 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



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31 facilities, which may serve populations within or outside of the
32 members of the entity. Notwithstanding s. 367.171(7), any
33 separate legal entity created under this paragraph is not
34 subject to commission jurisdiction and may not provide utility
35 services within the service area of an existing utility system
36 unless it has received the consent of the utility. A separate
37 legal entity that seeks to acquire any public facilities that
38 serve populations outside of the jurisdiction of members of the
39 entity must notify in writing each host government of the
40 contemplated acquisition prior to any transfer of ownership,
41 use, or possession of any utility assets to such separate legal
42 entity. The potential acquisition notice must be provided in
43 writing to the legislative head of the governing body of the
44 host government and its chief administrative officer and provide
45 the name and address of a contact person of the separate legal
46 entity for the receipt of information on the contemplated
47 acquisition. Within 45 days following receipt of the notice, the
48 host government may adopt a membership resolution indicating its
49 intent to become a member of the separate legal entity, a
50 prohibition resolution to prohibit the acquisition by the
51 separate legal entity of public facilities within its
52 jurisdiction, an approval resolution prescribing any
53 restrictions on the proposed acquisition required by the host
54 local government, or take no action of any kind. If a host
55 government adopts a membership resolution, the separate legal
56 entity shall accept the host government as a member prior to any
57 transfer of ownership, use, or possession of the public
58 facilities on the same basis as its existing members. If a host
59 government adopts a prohibition resolution, the separate legal
60 entity may not acquire the public facilities within such host



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61 government's territory without specific consent of the host
62 government by future resolution. If a host government does not
63 adopt a membership resolution, a prohibition resolution, or an
64 approval resolution, the separate legal entity may proceed to
65 acquire the public facilities after the 45-day notice period
66 without further notice, except as otherwise agreed upon by the
67 separate legal entity and the host government. The host
68 government may not prohibit the acquisition of such public
69 facilities if it has not responded to the legal entity within
70 the 45-day notice period. For purposes of this paragraph, a
71 "host government" is the governing body of the county if a
72 majority of the retail utility customers to be served by the
73 acquired public facilities within the county reside in the
74 unincorporated area, or is the governing body of a municipality
75 if the majority of the retail utility customers to be served by
76 the acquired public facilities reside within the municipal
77 boundaries. Any host government may, in its adoption of an
78 approval resolution or a membership resolution or by resolution
79 adopted subsequent to the closing of an acquisition, reserve the
80 right to review and approve as fair and reasonable the rates,
81 charges, and customer classifications adopted by the separate
82 legal entity for the use of the acquired public facilities
83 within the jurisdiction of the host local government. Such right
84 of rate review and approval by the host local government is
85 subject to the obligation of the separate legal entity to
86 establish rates and charges that comply with the requirements
87 contained in any resolution or trust agreement relating to the
88 issuance of bonds to acquire and improve the affected public
89 facilities and such right does not affect the obligation of the
90 separate legal entity to set rates at a level sufficient to pay



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91 debt service on its obligations issued in relation to the
92 affected public facilities. This paragraph is an alternative
93 provision otherwise provided by law as authorized in s. 4, Art.
94 VIII of the State Constitution for any transfer of power as a
95 result of an acquisition of public facilities by a separate
96 legal entity from a municipality, county, or special district.
97 The entity may finance or refinance the acquisition,
98 construction, expansion, and improvement of such facilities
99 relating to a governmental function or purpose through the
100 issuance of its bonds, notes, or other obligations under this
101 section or as otherwise authorized by law. The entity has all
102 the powers provided by the interlocal agreement under which it
103 is created or which are necessary to finance, own, operate, or
104 manage the public facility, including, without limitation, the
105 power to establish rates, charges, and fees for products or
106 services provided by it, the power to levy special assessments,
107 the power to sell or finance all or a portion of such facility,
108 and the power to contract with a public or private entity to
109 manage and operate such facilities or to provide or receive
110 facilities, services, or products. Except as may be limited by
111 the interlocal agreement under which the entity is created, all
112 of the privileges, benefits, powers, and terms of s. 125.01,
113 relating to counties, and s. 166.021, relating to
114 municipalities, are fully applicable to the entity. However,
115 neither the entity nor any of its members on behalf of the
116 entity may exercise the power of eminent domain over the
117 facilities or property of any existing water or wastewater plant
118 utility system, nor may the entity acquire title to any water or
119 wastewater plant utility facilities, other facilities, or
120 property which was acquired by the use of eminent domain after



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121 the effective date of this act. Bonds, notes, and other
122 obligations issued by the entity are issued on behalf of the
123 public agencies that are members of the entity.

124 2. Any entity created under this section may also issue
125 bond anticipation notes in connection with the authorization,
126 issuance, and sale of bonds. The bonds may be issued as serial
127 bonds or as term bonds or both. Any entity may issue capital
128 appreciation bonds or variable rate bonds. Any bonds, notes, or
129 other obligations must be authorized by resolution of the
130 governing body of the entity and bear the date or dates; mature
131 at the time or times, not exceeding 40 years from their
132 respective dates; bear interest at the rate or rates; be payable
133 at the time or times; be in the denomination; be in the form;
134 carry the registration privileges; be executed in the manner; be
135 payable from the sources and in the medium or payment and at the
136 place; and be subject to the terms of redemption, including
137 redemption prior to maturity, as the resolution may provide. If
138 any officer whose signature, or a facsimile of whose signature,
139 appears on any bonds, notes, or other obligations ceases to be
140 an officer before the delivery of the bonds, notes, or other
141 obligations, the signature or facsimile is valid and sufficient
142 for all purposes as if he or she had remained in office until
143 the delivery. The bonds, notes, or other obligations may be sold
144 at public or private sale for such price as the governing body
145 of the entity shall determine. Pending preparation of the
146 definitive bonds, the entity may issue interim certificates,
147 which shall be exchanged for the definitive bonds. The bonds may
148 be secured by a form of credit enhancement, if any, as the
149 entity deems appropriate. The bonds may be secured by an
150 indenture of trust or trust agreement. In addition, the



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151 governing body of the legal entity may delegate, to an officer,
152 official, or agent of the legal entity as the governing body of
153 the legal entity may select, the power to determine the time;
154 manner of sale, public or private; maturities; rate of interest,
155 which may be fixed or may vary at the time and in accordance
156 with a specified formula or method of determination; and other
157 terms and conditions as may be deemed appropriate by the
158 officer, official, or agent so designated by the governing body
159 of the legal entity. However, the amount and maturity of the
160 bonds, notes, or other obligations and the interest rate of the
161 bonds, notes, or other obligations must be within the limits
162 prescribed by the governing body of the legal entity and its
163 resolution delegating to an officer, official, or agent the
164 power to authorize the issuance and sale of the bonds, notes, or
165 other obligations.

166 3. Bonds, notes, or other obligations issued under
167 subparagraph 1. may be validated as provided in chapter 75. The
168 complaint in any action to validate the bonds, notes, or other
169 obligations must be filed only in the Circuit Court for Leon
170 County. The notice required to be published by s. 75.06 must be
171 published in Leon County and in each county that is a member of
172 the entity issuing the bonds, notes, or other obligations, or in
173 which a member of the entity is located, and the complaint and
174 order of the circuit court must be served only on the State
175 Attorney of the Second Judicial Circuit and on the state
176 attorney of each circuit in each county that is a member of the
177 entity issuing the bonds, notes, or other obligations or in
178 which a member of the entity is located. Section 75.04(2) does
179 not apply to a complaint for validation brought by the legal
180 entity.



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181 4. The accomplishment of the authorized purposes of a
182 legal entity created under this paragraph is in all respects for
183 the benefit of the people of the state, for the increase of
184 their commerce and prosperity, and for the improvement of their
185 health and living conditions. Since the legal entity will
186 perform essential governmental functions in accomplishing its
187 purposes, the legal entity is not required to pay any taxes or
188 assessments of any kind whatsoever upon any property acquired or
189 used by it for such purposes or upon any revenues at any time
190 received by it. The bonds, notes, and other obligations of an
191 entity, their transfer and the income therefrom, including any
192 profits made on the sale thereof, are at all times free from
193 taxation of any kind by the state or by any political
194 subdivision or other agency or instrumentality thereof. The
195 exemption granted in this subparagraph is not applicable to any
196 tax imposed by chapter 220 on interest, income, or profits on
197 debt obligations owned by corporations.

198 Section 2. The acquisition requirements contained in the
199 amendments to s. 163.01(7)(g)1., Florida Statutes, provided in
200 this act which condition the acquisition by a separate legal
201 entity of public facilities that serve populations outside of
202 the members of the entity on the provision by such separate
203 legal entity of a potential acquisition notice to all host
204 governments and on the granting to a host government the
205 opportunity to adopt a membership resolution, a prohibition
206 resolution, or an approval resolution shall be retroactively
207 applied and substantial compliance with such acquisition
208 requirements shall be a specific condition of any acquisition
209 subsequent to September 1, 2002, of public facilities by a
210 separate legal entity created by interlocal agreement pursuant



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211 to s. 163.01(7)(g)1., Florida Statutes, pursuant to an
212 acquisition agreement entered into prior or subsequent to
213 September 1, 2002.

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

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