

By Senator Cowin

20-184-03

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 providing for a binding arbitration process
12 under the Public Service Commission to resolve
13 certain disputes relating to utility
14 acquisition; authorizing the commission to
15 adopt rules; providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Paragraph (g) of subsection (7) of section
20 163.01, Florida Statutes, is amended to read:

21 163.01 Florida Interlocal Cooperation Act of 1969.--
22 (7)

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

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

10 2. For purposes of this paragraph, the term "utility"
11 means a water or wastewater utility and includes every person,
12 separate legal entity, lessee, trustee, or receiver owning,
13 operating, managing, or controlling a system, or proposing
14 construction of a system, who is providing, or proposes to
15 provide, water or wastewater service to the public for
16 compensation. For purposes of this paragraph, the term "host
17 government" means either the governing body of the county, if
18 the largest number of equivalent residential connections
19 currently served by the utility is located in the
20 unincorporated area, or the governing body of a municipality,
21 if the largest number of equivalent residential connections
22 currently served by the utility is located within that
23 municipality's boundaries. A separate legal entity that seeks
24 to acquire any utility must notify the host government in
25 writing by certified mail about the contemplated acquisition
26 not less than 90 days before any proposed transfer of
27 ownership, use, or possession of any utility assets by such
28 separate legal entity. The potential acquisition notice must
29 be provided to the legislative head of the governing body of
30 the host government and to its chief administrative officer
31 and must provide the name and address of a contact person for

1 the separate legal entity and information identified in s.
2 367.071(4)(a) concerning the contemplated acquisition.

3 3. Within 90 days following receipt of the notice, the
4 host government may adopt a resolution to approve the utility
5 acquisition; adopt a resolution to prohibit the utility
6 acquisition by the separate legal entity if the host
7 government determines that the proposed acquisition is not in
8 the public interest; request in writing an automatic 45-day
9 extension of the 90-day period in order to allow sufficient
10 time for the host government to evaluate the proposed
11 acquisition; or take no action to agenda the proposed
12 acquisition for discussion at a public meeting, which shall be
13 construed as approval of the proposed acquisition. If a host
14 government adopts a prohibition resolution, the separate legal
15 entity may not acquire the utility within that host
16 government's territory without specific consent of the host
17 government by future resolution. If a host government does not
18 adopt a prohibition resolution or an approval resolution, does
19 not provide a written request for an extension of the 90-day
20 notice period, and takes no action to initiate judicial
21 proceedings regarding the proposed acquisition, the separate
22 legal entity may proceed to acquire the utility after the
23 90-day notice period without further notice, except as
24 otherwise agreed upon by the separate legal entity and the
25 host government.

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

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

1 determination that the proposed changes are not in the public
2 interest, the county may request and, if requested, shall
3 receive binding arbitration services through the Public
4 Service Commission to resolve the dispute with the separate
5 legal entity. The commission shall develop and adopt
6 administrative rules governing the arbitration process and
7 establishing fees for this dispute-resolution service.

8 5. The host government is guaranteed the right to
9 acquire any utility within its boundaries owned by the
10 separate legal entity. In those instances when the separate
11 legal entity and the host government cannot agree on the terms
12 and conditions of the acquisition, the host government may
13 request and, if requested, shall receive binding arbitration
14 services through the Public Service Commission to resolve the
15 disputed acquisition terms. The commission shall develop and
16 adopt administrative rules governing the arbitration process
17 and establishing the fees for these services. This paragraph
18 is an alternative provision otherwise provided by law as
19 authorized in s. 4, Art. VIII of the State Constitution for
20 any transfer of power as a result of an acquisition of a
21 utility by a separate legal entity from a municipality,
22 county, or special district.

23 6. The entity may finance or refinance the
24 acquisition, construction, expansion, and improvement of such
25 facilities relating to a governmental function or purpose
26 through the issuance of its bonds, notes, or other obligations
27 under this section or as otherwise authorized by law. Except
28 as limited by the terms and conditions of the utility
29 acquisition agreement, as approved by the applicable host
30 government, the entity has all the powers provided by the
31 interlocal agreement under which it is created or which are

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

23 7.2. Except as limited by the terms and conditions of
24 the utility acquisition agreement, as approved by the
25 applicable host government,any entity created under this
26 section may also issue bond anticipation notes in connection
27 with the authorization, issuance, and sale of bonds. The bonds
28 may be issued as serial bonds or as term bonds or both. Any
29 entity may issue capital appreciation bonds or variable rate
30 bonds. Any bonds, notes, or other obligations must be
31 authorized by resolution of the governing body of the entity

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

1 obligations and the interest rate of the bonds, notes, or
2 other obligations must be within the limits prescribed by the
3 governing body of the legal entity and its resolution
4 delegating to an officer, official, or agent the power to
5 authorize the issuance and sale of the bonds, notes, or other
6 obligations.

7 8.3. Bonds, notes, or other obligations issued under
8 this paragraph ~~subparagraph 1.~~ may be validated as provided in
9 chapter 75. The complaint in any action to validate the bonds,
10 notes, or other obligations must be filed only in the Circuit
11 Court for Leon County. The notice required to be published by
12 s. 75.06 must be published in Leon County and in each county
13 that is a member of the entity issuing the bonds, notes, or
14 other obligations, or in which a member of the entity is
15 located, and the complaint and order of the circuit court must
16 be served only on the State Attorney of the Second Judicial
17 Circuit and on the state attorney of each circuit in each
18 county that is a member of the entity issuing the bonds,
19 notes, or other obligations or in which a member of the entity
20 is located. Section 75.04(2) does not apply to a complaint for
21 validation brought by the legal entity.

22 9.4. The accomplishment of the authorized purposes of
23 a legal entity created under this paragraph is in all respects
24 for the benefit of the people of the state, for the increase
25 of their commerce and prosperity, and for the improvement of
26 their health and living conditions. Since the legal entity
27 will perform essential governmental functions in accomplishing
28 its purposes, the legal entity is not required to pay any
29 taxes or assessments of any kind whatsoever upon any property
30 acquired or used by it for such purposes or upon any revenues
31 at any time received by it. The bonds, notes, and other

1 obligations of an entity, their transfer and the income
2 therefrom, including any profits made on the sale thereof, are
3 at all times free from taxation of any kind by the state or by
4 any political subdivision or other agency or instrumentality
5 thereof. The exemption granted in this subparagraph is not
6 applicable to any tax imposed by chapter 220 on interest,
7 income, or profits on debt obligations owned by corporations.

8 Section 2. This act shall take effect upon becoming a
9 law.

10 *****

11 SENATE SUMMARY

12 Limits applicability of those portions of the Florida
13 Interlocal Cooperation Act which deal with acquisition,
14 operation, and construction of water, wastewater,
15 alternative water supply, and water reuse facilities by
16 legal entities composed of municipalities and counties.
17 Provides powers of a host government, as defined, with
18 respect to approval of such an entity's acquisition of a
19 utility and approval of rates and other terms of service
20 by a utility. Provides for binding arbitration services
21 by the Public Service Commission in case of disputes
22 between host governments and separate legal entities.
23 Declares the right of a host government to acquire such a
24 utility operation within its boundaries.
25
26
27
28
29
30
31