

1 A bill to be entitled

2 An act relating to water and wastewater utilities;
3 amending s. 163.01, F.S.; revising provisions for a
4 separate legal entity to acquire, own, construct, improve,
5 operate, and manage or finance certain public facilities;
6 providing for petition to the Public Service Commission of
7 the action or binding arbitration for certain changes;
8 defining "host government," "separate legal entity,"
9 "system," and "utility"; requiring certain notice to the
10 commission and host government by the separate legal
11 entity that seeks to acquire any utility; providing
12 procedures for the host government to accept or reject the
13 proposal; requiring the separate legal entity to accept
14 the host government as a member upon adoption of a
15 membership resolution by the host government; providing
16 for the two parties to enter into negotiations to complete
17 the utility acquisition agreement; providing for the
18 separate legal entity to proceed with the acquisition if
19 the host government does not act; providing for petition
20 to the commission to consider whether the action is in the
21 public interest; providing for review and approval by the
22 host government of rates, charges, customer
23 classifications, terms of service, and changes to
24 financing; providing procedures for changes in rates,
25 charges, customer classifications, terms of service, and
26 financing; requiring notice of the proposed change;
27 providing for negotiations to resolve concerns of the host
28 government; providing for binding arbitration by the
29 commission; requiring the commission to develop and adopt

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30 administrative rules governing the arbitration process and
31 establishing fees; requiring any transfer or payment by
32 the separate legal entity to a member or other local
33 government to be solely from user fees or other charges or
34 revenues generated from customers that are physically
35 located within the jurisdictional or service delivery
36 boundaries of the member or local government receiving the
37 transfer or payment; authorizing a host government to
38 acquire any utility or utility system that it hosts that
39 is owned by the separate legal entity; providing for
40 limitation of powers and authority of the separate legal
41 entity by the terms and conditions of the utility
42 acquisition agreement; amending s. 120.52, F.S.; revising
43 the definition of "agency" to include a separate legal
44 entity for purposes of the Administrative Procedure Act;
45 amending ss. 367.021 and 367.071, F.S.; revising the
46 definition of "governmental authority" to exclude a
47 separate legal entity for purposes of the Water and
48 Wastewater System Regulatory Law; creating s. 367.0813,
49 F.S.; clarifying state policy that gains or losses from a
50 purchase or condemnation of a utility's assets that
51 results in the loss of customers served by such assets and
52 the associated future revenue streams shall be borne by
53 the shareholders of the utility; providing for
54 severability; providing for application; providing an
55 effective date.

56
57 Be It Enacted by the Legislature of the State of Florida:
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59 Section 1. Paragraph (g) of subsection (7) of section
60 163.01, Florida Statutes, is amended to read:

61 163.01 Florida Interlocal Cooperation Act of 1969.--
62 (7)

63 (g)1. Notwithstanding any other provisions of this
64 section, any separate legal entity created under this section,
65 the membership of which is limited to municipalities and
66 counties of the state, may acquire, own, construct, improve,
67 operate, and manage public facilities, or finance facilities on
68 behalf of any person, relating to a governmental function or
69 purpose, including, but not limited to, wastewater facilities,
70 water or alternative water supply facilities, and water reuse
71 facilities, which may serve populations within or outside of the
72 members of the entity. Notwithstanding s. 367.171(7), any
73 separate legal entity created under this paragraph is not
74 subject to Public Service Commission jurisdiction unless the
75 host government or at least 10 percent of the customers of the
76 utility system being acquired file a petition with the
77 commission seeking approval of the acquisition of the utility
78 system by the separate legal entity and seeking binding
79 arbitration by the commission of proposed changes to the initial
80 or subsequent rates and charges of the separate legal entity.
81 The separate legal entity ~~and~~ may not provide utility services
82 within the service area of an existing utility system unless it
83 has received the consent of the utility.

84 2. For purposes of this paragraph, the term:

85 a. "Host government" means either the governing body of
86 the county, if the largest number of equivalent residential
87 connections currently served by a system of the utility is

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88 located in the unincorporated area, or the governing body of a
 89 municipality, if the largest number of equivalent residential
 90 connections currently served by a system of the utility is
 91 located within that municipality's boundaries.

92 b. "Separate legal entity" means any entity created by
 93 interlocal agreement the membership of which is limited to two
 94 or more municipalities or counties of the state but which entity
 95 is legally separate and apart from any of its member
 96 governments.

97 c. "System" means each separate water or wastewater
 98 facility providing service.

99 d. "Utility" means a water or wastewater utility and
 100 includes every person, separate legal entity, lessee, trustee,
 101 or receiver owning, operating, managing, or controlling a
 102 system, or proposing construction of a system, who is providing,
 103 or proposes to provide, water or wastewater service to the
 104 public for compensation.

105 3. A separate legal entity that seeks to acquire any
 106 utility must notify the Public Service Commission and the host
 107 government in writing by certified mail about the contemplated
 108 acquisition not less than 30 days before any proposed transfer
 109 of ownership, use, or possession of any utility assets by such
 110 separate legal entity. The potential acquisition notice must be
 111 provided to the legislative head of the governing body of the
 112 host government and to its chief administrative officer and must
 113 provide the name and address of a contact person for the
 114 separate legal entity and information identified in s.
 115 367.071(4)(a) concerning the contemplated acquisition.

116 4.a. Within 30 days following receipt of the notice, the

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117 host government may adopt a resolution to become a member of the
118 separate legal entity, adopt a resolution to approve the utility
119 acquisition, adopt a resolution to prohibit the utility
120 acquisition by the separate legal entity if the host government
121 determines that the proposed acquisition is not in the public
122 interest, or request in writing an automatic 45-day extension of
123 the 30-day period in order to allow sufficient time for the host
124 government to evaluate the proposed acquisition. A resolution
125 adopted by the host government that prohibits the acquisition
126 may include conditions that would make the proposal acceptable
127 to the host government.

128 b. If a host government adopts a membership resolution,
129 the separate legal entity must accept the host government as a
130 member on the same basis as its existing members before any
131 transfer of ownership, use, or possession of the utility or the
132 utility facilities. If a host government adopts a resolution to
133 approve the utility acquisition, the two parties shall enter
134 into negotiations to complete the utility acquisition agreement.
135 If a host government adopts a prohibition resolution, the
136 separate legal entity may not acquire the utility within that
137 host government's territory without the specific consent of the
138 host government by future resolution. If a host government does
139 not adopt a prohibition resolution or an approval resolution,
140 does not provide a written request for an extension of the 30-
141 day notice period, and takes no action to initiate judicial
142 proceedings regarding the proposed acquisition, the separate
143 legal entity may proceed to acquire the utility after the 30-day
144 notice period without further notice.

145 c. Upon the filing of a petition by at least 10 percent of

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146 the customers of the system being acquired, the Public Service
 147 Commission shall consider whether the sale, assignment, or
 148 transfer of the utility is in the public interest pursuant to
 149 the provisions of s. 367.071(1).

150 5. In addition to the host government's right to review as
 151 fair and reasonable the rates, charges, customer
 152 classifications, and terms of service that will be in place at
 153 the time of acquisition, the host government has the right to
 154 review and approve as fair and reasonable any later changes
 155 proposed by the separate legal entity to the rates, charges,
 156 customer classifications, and terms of service before adoption
 157 by the separate legal entity. In addition, the host government
 158 has the right to review and approve any changes to the financing
 159 of such facilities that may result in increased costs to
 160 customers. Such right of review and approval by the host
 161 government is subject to the obligation of the separate legal
 162 entity to establish rates and charges that comply with the
 163 requirements contained in any resolution or trust agreement
 164 relating to the issuance of bonds to acquire and improve the
 165 affected utility and such right does not affect the obligation
 166 of the separate legal entity to set rates at a level sufficient
 167 to pay debt service on its obligations issued in relation to the
 168 host government utility.

169 6.a. In order to facilitate review of proposed changes by
 170 the host government, the separate legal entity must notify the
 171 host government in writing by certified mail about the proposed
 172 changes not fewer than 90 days before it implements any changes.
 173 The notice of proposed changes must be provided to the
 174 legislative head of the governing body of each host government

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175 and to its chief administrative officer and must provide the
176 name and address of a contact person for the separate legal
177 entity and information identified in s. 367.081(2)(a)1. as it
178 applies to publicly owned utilities about the proposed changes.
179 If, after review, the host government believes that the proposed
180 changes are in the public interest, the host government may pass
181 a resolution approving the proposed changes. If, after review,
182 the host government believes that the proposed changes are not
183 in the public interest, the host government may enter into
184 negotiation with the separate legal entity to resolve those
185 concerns.

186 b. If no agreement is reached within 30 days after the
187 host government's determination that the proposed changes are
188 not in the public interest, the host government or the separate
189 legal entity may request and, if requested, shall receive
190 binding arbitration services through the Public Service
191 Commission to resolve the dispute with the separate legal
192 entity. The commission shall develop and adopt administrative
193 rules governing the arbitration process and establishing fees
194 for this dispute-resolution service. The arbitration shall be
195 conducted by the commission within 90 days after the request by
196 the host government or the separate legal entity. The
197 commission's arbitration order shall ensure that the new rates
198 of the separate legal entity applicable to a specific host
199 government recover applicable costs of service, including costs
200 of financing, and provide for a reasonable rate of return.

201 7. After the acquisition or construction of any utility
202 systems by a separate legal entity created under this paragraph
203 revenues or any other income may not be transferred or paid to a

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204 member of a separate legal entity, or to any other county or
 205 municipality, from user fees or other charges or revenues
 206 generated from customers that are not physically located within
 207 the jurisdictional or service delivery boundaries of the member,
 208 county, or municipality receiving the transfer or payment. Any
 209 transfer or payment to a member or other local government must
 210 be solely from user fees or other charges or revenues generated
 211 from customers that are physically located within the
 212 jurisdictional or service delivery boundaries of the member or
 213 local government receiving the transfer or payment.

214 8. A host government may acquire any utility or utility
 215 system that it hosts that is owned by the separate legal entity.
 216 If the separate legal entity and the host government cannot
 217 agree on the terms and conditions of the acquisition, the host
 218 government may institute eminent domain proceedings under
 219 chapters 73 and 74, as applicable. This paragraph is an
 220 alternative provision otherwise provided by law as authorized in
 221 s. 4, Art. VIII of the State Constitution for any transfer of
 222 power as a result of an acquisition of a utility by a separate
 223 legal entity from a municipality, county, or special district.

224 9. The entity may finance or refinance the acquisition,
 225 construction, expansion, and improvement of such facilities
 226 relating to a governmental function or purpose through the
 227 issuance of its bonds, notes, or other obligations under this
 228 section or as otherwise authorized by law. Except as limited by
 229 the terms and conditions of the utility acquisition agreement,
 230 as approved by the applicable host government and subject to
 231 approval by the Public Service Commission if a petition is filed
 232 pursuant to subparagraph 1., the entity has all the powers

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233 provided by the interlocal agreement under which it is created
 234 or which are necessary to finance, own, operate, or manage the
 235 public facility, including, without limitation, the power to
 236 establish rates, charges, and fees for products or services
 237 provided by it, the power to levy special assessments, the power
 238 to sell or finance all or a portion of such facility, and the
 239 power to contract with a public or private entity to manage and
 240 operate such facilities or to provide or receive facilities,
 241 services, or products. Except as may be limited by the
 242 interlocal agreement under which the entity is created, all of
 243 the privileges, benefits, powers, and terms of s. 125.01,
 244 relating to counties, and s. 166.021, relating to
 245 municipalities, are fully applicable to the entity. However,
 246 neither the entity nor any of its members on behalf of the
 247 entity may exercise the power of eminent domain over the
 248 facilities or property of any existing water or wastewater plant
 249 utility system, nor may the entity acquire title to any water or
 250 wastewater plant utility facilities, other facilities, or
 251 property which was acquired by the use of eminent domain after
 252 the effective date of this act. Bonds, notes, and other
 253 obligations issued by the entity are issued on behalf of the
 254 public agencies that are members of the entity.

255 10.2- Except as limited by the terms and conditions of the
 256 utility acquisition agreement, as approved by the applicable
 257 host government and subject to approval by the Public Service
 258 Commission if a petition is filed pursuant to subparagraph 1.,
 259 any entity created under this section may also issue bond
 260 anticipation notes in connection with the authorization,
 261 issuance, and sale of bonds. The bonds may be issued as serial

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262 bonds or as term bonds or both. Any entity may issue capital
 263 appreciation bonds or variable rate bonds. Any bonds, notes, or
 264 other obligations must be authorized by resolution of the
 265 governing body of the entity and bear the date or dates; mature
 266 at the time or times, not exceeding 40 years from their
 267 respective dates; bear interest at the rate or rates; be payable
 268 at the time or times; be in the denomination; be in the form;
 269 carry the registration privileges; be executed in the manner; be
 270 payable from the sources and in the medium or payment and at the
 271 place; and be subject to the terms of redemption, including
 272 redemption prior to maturity, as the resolution may provide. If
 273 any officer whose signature, or a facsimile of whose signature,
 274 appears on any bonds, notes, or other obligations ceases to be
 275 an officer before the delivery of the bonds, notes, or other
 276 obligations, the signature or facsimile is valid and sufficient
 277 for all purposes as if he or she had remained in office until
 278 the delivery. The bonds, notes, or other obligations may be sold
 279 at public or private sale for such price as the governing body
 280 of the entity shall determine. Pending preparation of the
 281 definitive bonds, the entity may issue interim certificates,
 282 which shall be exchanged for the definitive bonds. The bonds may
 283 be secured by a form of credit enhancement, if any, as the
 284 entity deems appropriate. The bonds may be secured by an
 285 indenture of trust or trust agreement. In addition, the
 286 governing body of the legal entity may delegate, to an officer,
 287 official, or agent of the legal entity as the governing body of
 288 the legal entity may select, the power to determine the time;
 289 manner of sale, public or private; maturities; rate of interest,
 290 which may be fixed or may vary at the time and in accordance

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291 with a specified formula or method of determination; and other
 292 terms and conditions as may be deemed appropriate by the
 293 officer, official, or agent so designated by the governing body
 294 of the legal entity. However, the amount and maturity of the
 295 bonds, notes, or other obligations and the interest rate of the
 296 bonds, notes, or other obligations must be within the limits
 297 prescribed by the governing body of the legal entity and its
 298 resolution delegating to an officer, official, or agent the
 299 power to authorize the issuance and sale of the bonds, notes, or
 300 other obligations.

301 11.3- Bonds, notes, or other obligations issued under this
 302 paragraph ~~subparagraph 1.~~ may be validated as provided in
 303 chapter 75. The complaint in any action to validate the bonds,
 304 notes, or other obligations must be filed only in the Circuit
 305 Court for Leon County. The notice required to be published by s.
 306 75.06 must be published in Leon County and in each county that
 307 is a member of the entity issuing the bonds, notes, or other
 308 obligations, or in which a member of the entity is located, and
 309 the complaint and order of the circuit court must be served only
 310 on the State Attorney of the Second Judicial Circuit and on the
 311 state attorney of each circuit in each county that is a member
 312 of the entity issuing the bonds, notes, or other obligations or
 313 in which a member of the entity is located. Section 75.04(2)
 314 does not apply to a complaint for validation brought by the
 315 legal entity.

316 12.4- The accomplishment of the authorized purposes of a
 317 legal entity created under this paragraph is in all respects for
 318 the benefit of the people of the state, for the increase of
 319 their commerce and prosperity, and for the improvement of their

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320 health and living conditions. Since the legal entity will
 321 perform essential governmental functions in accomplishing its
 322 purposes, the legal entity is not required to pay any taxes or
 323 assessments of any kind whatsoever upon any property acquired or
 324 used by it for such purposes or upon any revenues at any time
 325 received by it. The bonds, notes, and other obligations of an
 326 entity, their transfer and the income therefrom, including any
 327 profits made on the sale thereof, are at all times free from
 328 taxation of any kind by the state or by any political
 329 subdivision or other agency or instrumentality thereof. The
 330 exemption granted in this subparagraph is not applicable to any
 331 tax imposed by chapter 220 on interest, income, or profits on
 332 debt obligations owned by corporations.

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

335 120.52 Definitions.--As used in this act:

336 (1) "Agency" means:

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

339 (b) Each:

340 1. State officer and state department, and each
 341 departmental unit described in s. 20.04.

342 2. Authority, including a regional water supply authority.

343 3. Board.

344 4. Commission, including the Commission on Ethics and the
 345 Fish and Wildlife Conservation Commission when acting pursuant
 346 to statutory authority derived from the Legislature.

347 5. Regional planning agency.

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

350 7. Educational units.

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

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

357
 358 This definition does not include any legal entity or agency
 359 created in whole or in part pursuant to chapter 361, part II,
 360 any metropolitan planning organization created pursuant to s.
 361 339.175, any separate legal or administrative entity created
 362 pursuant to s. 339.175 of which a metropolitan planning
 363 organization is a member, an expressway authority pursuant to
 364 chapter 348, any legal or administrative entity created by an
 365 interlocal agreement pursuant to s. 163.01(7), except those
 366 created pursuant to s. 163.01(7)(g)1., unless any party to such
 367 agreement is otherwise an agency as defined in this subsection,
 368 or any multicounty special district with a majority of its
 369 governing board comprised of elected persons; however, this
 370 definition shall include a regional water supply authority.

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

373 367.021 Definitions.--As used in this chapter, the
 374 following words or terms shall have the meanings indicated:

375 (7) "Governmental authority" means a political
 376 subdivision, as defined by s. 1.01(8), a regional water supply

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377 authority created pursuant to s. 373.1962, or a nonprofit
 378 corporation formed for the purpose of acting on behalf of a
 379 political subdivision with respect to a water or wastewater
 380 facility; however, this definition shall exclude a separate
 381 legal entity created pursuant to s. 163.01(7)(g)1.

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

384 367.071 Sale, assignment, or transfer of certificate of
 385 authorization, facilities, or control.--

386 (1) A ~~No~~ utility may not ~~shall~~ sell, assign, or transfer
 387 its certificate of authorization, facilities or any portion
 388 thereof, or majority organizational control without
 389 determination and approval of the commission that the proposed
 390 sale, assignment, or transfer is in the public interest and that
 391 the buyer, assignee, or transferee will fulfill the commitments,
 392 obligations, and representations of the utility. However, a
 393 sale, assignment, or transfer of its certificate of
 394 authorization, facilities or any portion thereof, or majority
 395 organizational control may occur prior to commission approval if
 396 the contract for sale, assignment, or transfer is made
 397 contingent upon commission approval.

398 (4) An application shall be disposed of as provided in s.
 399 367.045, except that:

400 (a) The sale of facilities, in whole or part, to a
 401 governmental authority, as defined in s. 367.021(7), shall be
 402 approved as a matter of right; however, the governmental
 403 authority shall, prior to taking any official action, obtain
 404 from the utility or commission with respect to the facilities to
 405 be sold the most recent available income and expense statement,

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406 balance sheet, and statement of rate base for regulatory
 407 purposes and contributions-in-aid-of-construction. Any request
 408 for rate relief pending before the commission at the time of
 409 sale is deemed to have been withdrawn. Interim rates, if
 410 previously approved by the commission, must be discontinued, and
 411 any money collected pursuant to interim rate relief must be
 412 refunded to the customers of the utility with interest.

413 (b) When paragraph (a) does not apply, the commission
 414 shall amend the certificate of authorization as necessary to
 415 reflect the change resulting from the sale, assignment, or
 416 transfer.

417 Section 5. Section 367.0813, Florida Statutes, is created
 418 to read:

419 367.0813 Gain or loss on purchase or condemnation by
 420 governmental authority.--In order to provide appropriate
 421 incentives to encourage the private sector to participate in the
 422 investment in water and wastewater infrastructure, to protect
 423 private-sector property rights of a utility's shareholders, and
 424 to avoid additional burden of costs placed on ratepayers by
 425 relitigating this issue, the Legislature affirms and clarifies
 426 the clear policy of this state that gains or losses from a
 427 purchase or condemnation of a utility's assets that results in
 428 the loss of customers served by such assets and the associated
 429 future revenue streams shall be borne by the shareholders of the
 430 utility. This section shall apply to all transactions prior to
 431 and after the effective date of this section.

432 Section 6. If any provision of this act or its application
 433 to any person or circumstance is held invalid, the invalidity
 434 does not affect other provisions or applications of this act

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435 which can be given effect without the invalid provision or
436 application, and to this end the provisions of this act are
437 declared severable.

438 Section 7. This act shall take effect upon becoming a law
439 and shall apply to all contracts pending on that date.