

CHAMBER ACTION

1 The Committee on Natural Resources recommends the following:

2  
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to water and wastewater utilities;  
7 amending s. 163.01, F.S.; revising provisions for a  
8 separate legal entity to acquire, own, construct, improve,  
9 operate, and manage or finance certain public facilities;  
10 providing for petition to the Public Service Commission of  
11 the action or binding arbitration for certain changes;  
12 defining "host government," "separate legal entity,"  
13 "system," and "utility"; requiring certain notice to the  
14 commission and host government by the separate legal  
15 entity that seeks to acquire any utility; providing  
16 procedures for the host government to accept or reject the  
17 proposal; requiring the separate legal entity to accept  
18 the host government as a member upon adoption of a  
19 membership resolution by the host government; providing  
20 for the two parties to enter into negotiations to complete  
21 the utility acquisition agreement; providing for the  
22 separate legal entity to proceed with the acquisition if  
23 the host government does not act; providing for petition

24 | to the commission to consider whether the action is in the  
25 | public interest; providing for review and approval by the  
26 | host government of rates, charges, customer  
27 | classifications, terms of service, and changes to  
28 | financing; providing procedures for changes in rates,  
29 | charges, customer classifications, terms of service, and  
30 | financing; requiring notice of the proposed change;  
31 | providing for negotiations to resolve concerns of the host  
32 | government; providing for binding arbitration by the  
33 | commission; requiring the commission to develop and adopt  
34 | administrative rules governing the arbitration process and  
35 | establishing fees; requiring any transfer or payment by  
36 | the separate legal entity to a member or other local  
37 | government to be solely from user fees or other charges or  
38 | revenues generated from customers that are physically  
39 | located within the jurisdictional or service delivery  
40 | boundaries of the member or local government receiving the  
41 | transfer or payment; authorizing a host government to  
42 | acquire any utility or utility system that it hosts that  
43 | is owned by the separate legal entity; providing for  
44 | limitation of powers and authority of the separate legal  
45 | entity by the terms and conditions of the utility  
46 | acquisition agreement; amending ss. 367.021 and 367.071,  
47 | F.S.; revising the definition of "governmental authority"  
48 | to exclude a separate legal entity for purposes of the  
49 | Water and Wastewater System Regulatory Law; creating s.  
50 | 367.0813, F.S.; clarifying state policy that gains or  
51 | losses from a purchase or condemnation of a utility's

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52 | assets that results in the loss of customers served by  
 53 | such assets and the associated future revenue streams  
 54 | shall be borne by the shareholders of the utility;  
 55 | amending s. 367.145, F.S.; revising requirements for  
 56 | payment of assessment fees by certain utilities; providing  
 57 | for severability; providing for application; providing an  
 58 | effective date.

59 |

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

61 |

62 | Section 1. Paragraph (g) of subsection (7) of section  
 63 | 163.01, Florida Statutes, is amended to read:

64 | 163.01 Florida Interlocal Cooperation Act of 1969.--

65 | (7)

66 | (g)1. Notwithstanding any other provisions of this  
 67 | section, any separate legal entity created under this section,  
 68 | the membership of which is limited to municipalities and  
 69 | counties of the state, may acquire, own, construct, improve,  
 70 | operate, and manage public facilities, or finance facilities on  
 71 | behalf of any person, relating to a governmental function or  
 72 | purpose, including, but not limited to, wastewater facilities,  
 73 | water or alternative water supply facilities, and water reuse  
 74 | facilities, which may serve populations within or outside of the  
 75 | members of the entity. Notwithstanding s. 367.171(7), any  
 76 | separate legal entity created under this paragraph is not  
 77 | subject to Public Service Commission jurisdiction unless the  
 78 | host government or at least 10 percent of the customers of the  
 79 | utility system being acquired file a petition with the

80 commission seeking approval of the acquisition of the utility  
 81 system by the separate legal entity and seeking binding  
 82 arbitration by the commission of proposed changes to the initial  
 83 or subsequent rates and charges of the separate legal entity.  
 84 The separate legal entity ~~and~~ may not provide utility services  
 85 within the service area of an existing utility system unless it  
 86 has received the consent of the utility.

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

88 a. "Host government" means either the governing body of  
 89 the county, if the largest number of equivalent residential  
 90 connections currently served by a system of the utility is  
 91 located in the unincorporated area, or the governing body of a  
 92 municipality, if the largest number of equivalent residential  
 93 connections currently served by a system of the utility is  
 94 located within that municipality's boundaries.

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

100 c. "System" means each separate water or wastewater  
 101 facility providing service.

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

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108        3. A separate legal entity that seeks to acquire any  
109 utility must notify the Public Service Commission and the host  
110 government in writing by certified mail about the contemplated  
111 acquisition not less than 30 days before any proposed transfer  
112 of ownership, use, or possession of any utility assets by such  
113 separate legal entity. The potential acquisition notice must be  
114 provided to the legislative head of the governing body of the  
115 host government and to its chief administrative officer and must  
116 provide the name and address of a contact person for the  
117 separate legal entity and information identified in s.  
118 367.071(4)(a) concerning the contemplated acquisition.

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

131        b. If a host government adopts a membership resolution,  
132 the separate legal entity must accept the host government as a  
133 member on the same basis as its existing members before any  
134 transfer of ownership, use, or possession of the utility or the  
135 utility facilities. If a host government adopts a resolution to

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136 approve the utility acquisition, the two parties shall enter  
137 into negotiations to complete the utility acquisition agreement.  
138 If a host government adopts a prohibition resolution, the  
139 separate legal entity may not acquire the utility within that  
140 host government's territory without the specific consent of the  
141 host government by future resolution. If a host government does  
142 not adopt a prohibition resolution or an approval resolution,  
143 does not provide a written request for an extension of the 30-  
144 day notice period, and takes no action to initiate judicial  
145 proceedings regarding the proposed acquisition, the separate  
146 legal entity may proceed to acquire the utility after the 30-day  
147 notice period without further notice.

148 c. Upon the filing of a petition by at least 10 percent of  
149 the customers of the system being acquired, the Public Service  
150 Commission shall consider whether the sale, assignment, or  
151 transfer of the utility is in the public interest pursuant to  
152 the provisions of s. 367.071(1).

153 5. In addition to the host government's right to review as  
154 fair and reasonable the rates, charges, customer  
155 classifications, and terms of service that will be in place at  
156 the time of acquisition, the host government has the right to  
157 review and approve as fair and reasonable any later changes  
158 proposed by the separate legal entity to the rates, charges,  
159 customer classifications, and terms of service before adoption  
160 by the separate legal entity. In addition, the host government  
161 has the right to review and approve any changes to the financing  
162 of such facilities that may result in increased costs to  
163 customers. Such right of review and approval by the host

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164 government is subject to the obligation of the separate legal  
165 entity to establish rates and charges that comply with the  
166 requirements contained in any resolution or trust agreement  
167 relating to the issuance of bonds to acquire and improve the  
168 affected utility and such right does not affect the obligation  
169 of the separate legal entity to set rates at a level sufficient  
170 to pay debt service on its obligations issued in relation to the  
171 host government utility.

172 6.a. In order to facilitate review of proposed changes by  
173 the host government, the separate legal entity must notify the  
174 host government in writing by certified mail about the proposed  
175 changes not fewer than 90 days before it implements any changes.  
176 The notice of proposed changes must be provided to the  
177 legislative head of the governing body of each host government  
178 and to its chief administrative officer and must provide the  
179 name and address of a contact person for the separate legal  
180 entity and information identified in s. 367.081(2)(a)1. as it  
181 applies to publicly owned utilities about the proposed changes.  
182 If, after review, the host government believes that the proposed  
183 changes are in the public interest, the host government may pass  
184 a resolution approving the proposed changes. If, after review,  
185 the host government believes that the proposed changes are not  
186 in the public interest, the host government may enter into  
187 negotiation with the separate legal entity to resolve those  
188 concerns.

189 b. If no agreement is reached within 30 days after the  
190 host government's determination that the proposed changes are  
191 not in the public interest, the host government or the separate

192 legal entity may request and, if requested, shall receive  
 193 binding arbitration services through the Public Service  
 194 Commission to resolve the dispute with the separate legal  
 195 entity. The commission shall develop and adopt administrative  
 196 rules governing the arbitration process and establishing fees  
 197 for this dispute-resolution service. The arbitration shall be  
 198 conducted by the commission within 90 days after the request by  
 199 the host government or the separate legal entity. The  
 200 commission's arbitration order shall ensure that the new rates  
 201 of the separate legal entity applicable to a specific host  
 202 government recover applicable costs of service, including costs  
 203 of financing, and provide for a reasonable rate of return.

204 7. After the acquisition or construction of any utility  
 205 systems by a separate legal entity created under this paragraph  
 206 revenues or any other income may not be transferred or paid to a  
 207 member of a separate legal entity, or to any other county or  
 208 municipality, from user fees or other charges or revenues  
 209 generated from customers that are not physically located within  
 210 the jurisdictional or service delivery boundaries of the member,  
 211 county, or municipality receiving the transfer or payment. Any  
 212 transfer or payment to a member or other local government must  
 213 be solely from user fees or other charges or revenues generated  
 214 from customers that are physically located within the  
 215 jurisdictional or service delivery boundaries of the member or  
 216 local government receiving the transfer or payment.

217 8. A host government may acquire any utility or utility  
 218 system that it hosts that is owned by the separate legal entity.  
 219 If the separate legal entity and the host government cannot



220 agree on the terms and conditions of the acquisition, the host  
 221 government may institute eminent domain proceedings under  
 222 chapters 73 and 74, as applicable. This paragraph is an  
 223 alternative provision otherwise provided by law as authorized in  
 224 s. 4, Art. VIII of the State Constitution for any transfer of  
 225 power as a result of an acquisition of a utility by a separate  
 226 legal entity from a municipality, county, or special district.

227 9. The entity may finance or refinance the acquisition,  
 228 construction, expansion, and improvement of such facilities  
 229 relating to a governmental function or purpose through the  
 230 issuance of its bonds, notes, or other obligations under this  
 231 section or as otherwise authorized by law. Except as limited by  
 232 the terms and conditions of the utility acquisition agreement,  
 233 as approved by the applicable host government and subject to  
 234 approval by the Public Service Commission if a petition is filed  
 235 pursuant to subparagraph 1., the entity has all the powers  
 236 provided by the interlocal agreement under which it is created  
 237 or which are necessary to finance, own, operate, or manage the  
 238 public facility, including, without limitation, the power to  
 239 establish rates, charges, and fees for products or services  
 240 provided by it, the power to levy special assessments, the power  
 241 to sell or finance all or a portion of such facility, and the  
 242 power to contract with a public or private entity to manage and  
 243 operate such facilities or to provide or receive facilities,  
 244 services, or products. Except as may be limited by the  
 245 interlocal agreement under which the entity is created, all of  
 246 the privileges, benefits, powers, and terms of s. 125.01,  
 247 relating to counties, and s. 166.021, relating to

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248 municipalities, are fully applicable to the entity. However,  
 249 neither the entity nor any of its members on behalf of the  
 250 entity may exercise the power of eminent domain over the  
 251 facilities or property of any existing water or wastewater plant  
 252 utility system, nor may the entity acquire title to any water or  
 253 wastewater plant utility facilities, other facilities, or  
 254 property which was acquired by the use of eminent domain after  
 255 the effective date of this act. Bonds, notes, and other  
 256 obligations issued by the entity are issued on behalf of the  
 257 public agencies that are members of the entity.

258 10.2- Except as limited by the terms and conditions of the  
 259 utility acquisition agreement, as approved by the applicable  
 260 host government and subject to approval by the Public Service  
 261 Commission if a petition is filed pursuant to subparagraph 1.,  
 262 any entity created under this section may also issue bond  
 263 anticipation notes in connection with the authorization,  
 264 issuance, and sale of bonds. The bonds may be issued as serial  
 265 bonds or as term bonds or both. Any entity may issue capital  
 266 appreciation bonds or variable rate bonds. Any bonds, notes, or  
 267 other obligations must be authorized by resolution of the  
 268 governing body of the entity and bear the date or dates; mature  
 269 at the time or times, not exceeding 40 years from their  
 270 respective dates; bear interest at the rate or rates; be payable  
 271 at the time or times; be in the denomination; be in the form;  
 272 carry the registration privileges; be executed in the manner; be  
 273 payable from the sources and in the medium or payment and at the  
 274 place; and be subject to the terms of redemption, including  
 275 redemption prior to maturity, as the resolution may provide. If

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276 | any officer whose signature, or a facsimile of whose signature,  
277 | appears on any bonds, notes, or other obligations ceases to be  
278 | an officer before the delivery of the bonds, notes, or other  
279 | obligations, the signature or facsimile is valid and sufficient  
280 | for all purposes as if he or she had remained in office until  
281 | the delivery. The bonds, notes, or other obligations may be sold  
282 | at public or private sale for such price as the governing body  
283 | of the entity shall determine. Pending preparation of the  
284 | definitive bonds, the entity may issue interim certificates,  
285 | which shall be exchanged for the definitive bonds. The bonds may  
286 | be secured by a form of credit enhancement, if any, as the  
287 | entity deems appropriate. The bonds may be secured by an  
288 | indenture of trust or trust agreement. In addition, the  
289 | governing body of the legal entity may delegate, to an officer,  
290 | official, or agent of the legal entity as the governing body of  
291 | the legal entity may select, the power to determine the time;  
292 | manner of sale, public or private; maturities; rate of interest,  
293 | which may be fixed or may vary at the time and in accordance  
294 | with a specified formula or method of determination; and other  
295 | terms and conditions as may be deemed appropriate by the  
296 | officer, official, or agent so designated by the governing body  
297 | of the legal entity. However, the amount and maturity of the  
298 | bonds, notes, or other obligations and the interest rate of the  
299 | bonds, notes, or other obligations must be within the limits  
300 | prescribed by the governing body of the legal entity and its  
301 | resolution delegating to an officer, official, or agent the  
302 | power to authorize the issuance and sale of the bonds, notes, or  
303 | other obligations.

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

319        12.4- The accomplishment of the authorized purposes of a  
 320 legal entity created under this paragraph is in all respects for  
 321 the benefit of the people of the state, for the increase of  
 322 their commerce and prosperity, and for the improvement of their  
 323 health and living conditions. Since the legal entity will  
 324 perform essential governmental functions in accomplishing its  
 325 purposes, the legal entity is not required to pay any taxes or  
 326 assessments of any kind whatsoever upon any property acquired or  
 327 used by it for such purposes or upon any revenues at any time  
 328 received by it. The bonds, notes, and other obligations of an  
 329 entity, their transfer and the income therefrom, including any  
 330 profits made on the sale thereof, are at all times free from  
 331 taxation of any kind by the state or by any political

332 subdivision or other agency or instrumentality thereof. The  
 333 exemption granted in this subparagraph is not applicable to any  
 334 tax imposed by chapter 220 on interest, income, or profits on  
 335 debt obligations owned by corporations.

336 Section 2. Subsection (7) of section 367.021, Florida  
 337 Statutes, is amended to read:

338 367.021 Definitions.--As used in this chapter, the  
 339 following words or terms shall have the meanings indicated:

340 (7) "Governmental authority" means a political  
 341 subdivision, as defined by s. 1.01(8), a regional water supply  
 342 authority created pursuant to s. 373.1962, or a nonprofit  
 343 corporation formed for the purpose of acting on behalf of a  
 344 political subdivision with respect to a water or wastewater  
 345 facility; however, this definition shall exclude a separate  
 346 legal entity created pursuant to s. 163.01(7)(g)1.

347 Section 3. Subsections (1) and (4) of section 367.071,  
 348 Florida Statutes, are amended to read:

349 367.071 Sale, assignment, or transfer of certificate of  
 350 authorization, facilities, or control.--

351 (1) A ~~No~~ utility may not ~~shall~~ sell, assign, or transfer  
 352 its certificate of authorization, facilities or any portion  
 353 thereof, or majority organizational control without  
 354 determination and approval of the commission that the proposed  
 355 sale, assignment, or transfer is in the public interest and that  
 356 the buyer, assignee, or transferee will fulfill the commitments,  
 357 obligations, and representations of the utility. However, a  
 358 sale, assignment, or transfer of its certificate of  
 359 authorization, facilities or any portion thereof, or majority

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360 organizational control may occur prior to commission approval if  
 361 the contract for sale, assignment, or transfer is made  
 362 contingent upon commission approval.

363 (4) An application shall be disposed of as provided in s.  
 364 367.045, except that:

365 (a) The sale of facilities, in whole or part, to a  
 366 governmental authority, as defined in s. 367.021(7), shall be  
 367 approved as a matter of right; however, the governmental  
 368 authority shall, prior to taking any official action, obtain  
 369 from the utility or commission with respect to the facilities to  
 370 be sold the most recent available income and expense statement,  
 371 balance sheet, and statement of rate base for regulatory  
 372 purposes and contributions-in-aid-of-construction. Any request  
 373 for rate relief pending before the commission at the time of  
 374 sale is deemed to have been withdrawn. Interim rates, if  
 375 previously approved by the commission, must be discontinued, and  
 376 any money collected pursuant to interim rate relief must be  
 377 refunded to the customers of the utility with interest.

378 (b) When paragraph (a) does not apply, the commission  
 379 shall amend the certificate of authorization as necessary to  
 380 reflect the change resulting from the sale, assignment, or  
 381 transfer.

382 Section 4. Section 367.0813, Florida Statutes, is created  
 383 to read:

384 367.0813 Gain or loss on purchase or condemnation by  
 385 governmental authority.--In order to provide appropriate  
 386 incentives to encourage the private sector to participate in the  
 387 investment in water and wastewater infrastructure, to protect

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388 private-sector property rights of a utility's shareholders, and  
 389 to avoid additional burden of costs placed on ratepayers by  
 390 relitigating this issue, the Legislature affirms and clarifies  
 391 the clear policy of this state that gains or losses from a  
 392 purchase or condemnation of a utility's assets that results in  
 393 the loss of customers served by such assets and the associated  
 394 future revenue streams shall be borne by the shareholders of the  
 395 utility. This section shall apply to all transactions prior to  
 396 and after the effective date of this section.

397 Section 5. Subsection (1) of section 367.145, Florida  
 398 Statutes, is amended to read:

399 367.145 Regulatory assessment and application fees.--

400 (1) The commission shall set by rule a regulatory  
 401 assessment fee that each utility must pay in accordance with s.  
 402 350.113(3); however, small utilities with annual revenues less  
 403 than \$200,000 shall pay once a year in conjunction with filing  
 404 its annual financial report required by commission rule.

405 Notwithstanding any provision of law to the contrary, the amount  
 406 of the regulatory assessment fee shall not exceed 4.5 percent of  
 407 the gross revenues of the utility derived from intrastate  
 408 business, excluding sales for resale made to a regulated  
 409 company.

410 (a) A governmental authority to which ownership or control  
 411 of a utility is transferred is not liable for any fees owed the  
 412 commission by the utility as of the date of transfer. However,  
 413 whenever a purchase at wholesale is made of any water or  
 414 wastewater service and a fee is paid or payable thereon by the  
 415 selling utility and the utility purchasing such water or

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416 wastewater service resells the same directly to customers, the  
417 purchasing utility is entitled to, and must receive, credit on  
418 such fees as may be due by it under this section to the extent  
419 of the fee paid or payable upon such water or wastewater service  
420 by the utility from which such purchase was made. All such fee  
421 payments and penalties must be deposited in accordance with s.  
422 350.113.

423 (b) In addition to the penalties and interest otherwise  
424 provided, the commission may impose a penalty upon a utility for  
425 failure to pay regulatory assessment fees in a timely manner in  
426 accordance with s. 367.161.

427 Section 6. If any provision of this act or its application  
428 to any person or circumstance is held invalid, the invalidity  
429 does not affect other provisions or applications of this act  
430 which can be given effect without the invalid provision or  
431 application, and to this end the provisions of this act are  
432 declared severable.

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