

CHAMBER ACTION

1 The Committee on Appropriations 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 defining the terms "host government," "separate legal  
11 entity," "system," and "utility"; requiring certain notice  
12 to the host government by the separate legal entity that  
13 seeks to acquire any utility; providing for the host  
14 government to adopt a resolution to accept or reject the  
15 proposal or to become a member of the separate legal  
16 entity; requiring the separate legal entity to accept the  
17 host government as a member upon adoption of a membership  
18 resolution by the host government; providing for the  
19 separate legal entity to complete the utility acquisition;  
20 requiring any transfer or payment by the separate legal  
21 entity to a member, special district, county, or  
22 municipality to be solely from revenues generated from  
23 customers that are physically located within the

24 jurisdictional or service delivery boundaries of the  
 25 member, special district, county, or municipality  
 26 receiving the transfer or payment; specifying  
 27 constitutional authorization; creating s. 367.0813, F.S.;  
 28 clarifying state policy that gains or losses from a  
 29 purchase or condemnation of a utility's assets that  
 30 results in the loss of customers served by such assets and  
 31 the associated future revenue streams shall be borne by  
 32 the shareholders of the utility; amending s. 367.145,  
 33 F.S.; revising requirements for payment of assessment fees  
 34 by certain utilities; providing for severability;  
 35 providing for application; providing an effective date.  
 36

37 Be It Enacted by the Legislature of the State of Florida:  
 38

39 Section 1. Paragraph (g) of subsection (7) of section  
 40 163.01, Florida Statutes, is amended to read:

41 163.01 Florida Interlocal Cooperation Act of 1969.--  
 42 (7)

43 (g)1. Notwithstanding any other provisions of this  
 44 section, any separate legal entity created under this section,  
 45 the membership of which is limited to municipalities and  
 46 counties of the state, and which may include a special district  
 47 in addition to a municipality or county, or both, may acquire,  
 48 own, construct, improve, operate, and manage public facilities,  
 49 or finance facilities on behalf of any person, relating to a  
 50 governmental function or purpose, including, but not limited to,  
 51 wastewater facilities, water or alternative water supply

52 facilities, and water reuse facilities, which may serve  
 53 populations within or outside of the members of the entity.  
 54 Notwithstanding s. 367.171(7), any separate legal entity created  
 55 under this paragraph is not subject to Public Service Commission  
 56 jurisdiction. The separate legal entity ~~and~~ may not provide  
 57 utility services within the service area of an existing utility  
 58 system unless it has received the consent of the utility.

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

60 a. "Host government" means either the governing body of  
 61 the county, if the largest number of equivalent residential  
 62 connections currently served by a system of the utility is  
 63 located in the unincorporated area, or the governing body of a  
 64 municipality, if the largest number of equivalent residential  
 65 connections currently served by a system of the utility is  
 66 located within that municipality's boundaries.

67 b. "Separate legal entity" means any entity created by  
 68 interlocal agreement the membership of which is limited to two  
 69 or more special districts, municipalities, or counties of the  
 70 state but which entity is legally separate and apart from any of  
 71 its member governments.

72 c. "System" means a water or wastewater facility or group  
 73 of such facilities owned by one entity or affiliate entities.

74 d. "Utility" means a water or wastewater utility and  
 75 includes every person, separate legal entity, lessee, trustee,  
 76 or receiver owning, operating, managing, or controlling a  
 77 system, or proposing construction of a system, who is providing,  
 78 or proposes to provide, water or wastewater service to the  
 79 public for compensation.

80       3. A separate legal entity that seeks to acquire any  
81 utility must notify the host government in writing by certified  
82 mail about the contemplated acquisition not less than 30 days  
83 before any proposed transfer of ownership, use, or possession of  
84 any utility assets by such separate legal entity. The potential  
85 acquisition notice must be provided to the legislative head of  
86 the governing body of the host government and to its chief  
87 administrative officer and must provide the name and address of  
88 a contact person for the separate legal entity and information  
89 identified in s. 367.071(4)(a) concerning the contemplated  
90 acquisition.

91       4.a. Within 30 days following receipt of the notice, the  
92 host government may adopt a resolution to become a member of the  
93 separate legal entity, adopt a resolution to approve the utility  
94 acquisition, or adopt a resolution to prohibit the utility  
95 acquisition by the separate legal entity if the host government  
96 determines that the proposed acquisition is not in the public  
97 interest. A resolution adopted by the host government that  
98 prohibits the acquisition may include conditions that would make  
99 the proposal acceptable to the host government.

100       b. If a host government adopts a membership resolution,  
101 the separate legal entity must accept the host government as a  
102 member on the same basis as its existing members before any  
103 transfer of ownership, use, or possession of the utility or the  
104 utility facilities. If a host government adopts a resolution to  
105 approve the utility acquisition, the separate legal entity may  
106 complete the acquisition. If a host government adopts a  
107 prohibition resolution, the separate legal entity may not

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108 acquire the utility within that host government's territory  
109 without the specific consent of the host government by future  
110 resolution. If a host government does not adopt a prohibition  
111 resolution or an approval resolution, the separate legal entity  
112 may proceed to acquire the utility after the 30-day notice  
113 period without further notice.

114 5. After the acquisition or construction of any utility  
115 systems by a separate legal entity created under this paragraph,  
116 revenues or any other income may not be transferred or paid to a  
117 member of a separate legal entity or to any other special  
118 district, county, or municipality from user fees or other  
119 charges or revenues generated from customers that are not  
120 physically located within the jurisdictional or service delivery  
121 boundaries of the member, special district, county, or  
122 municipality receiving the transfer or payment. Any transfer or  
123 payment to a member, special district, or other local government  
124 must be solely from user fees or other charges or revenues  
125 generated from customers that are physically located within the  
126 jurisdictional or service delivery boundaries of the member,  
127 special district, or local government receiving the transfer or  
128 payment.

129 6. This section is an alternative provision otherwise  
130 provided by law as authorized in s. 4, Art. VIII of the State  
131 Constitution for any transfer of power as a result of an  
132 acquisition of a utility by a separate legal entity from a  
133 municipality, county, or special district.

134 7. The entity may finance or refinance the acquisition,  
135 construction, expansion, and improvement of such facilities

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136 relating to a governmental function or purpose through the  
137 issuance of its bonds, notes, or other obligations under this  
138 section or as otherwise authorized by law. The entity has all  
139 the powers provided by the interlocal agreement under which it  
140 is created or which are necessary to finance, own, operate, or  
141 manage the public facility, including, without limitation, the  
142 power to establish rates, charges, and fees for products or  
143 services provided by it, the power to levy special assessments,  
144 the power to sell or finance all or a portion of such facility,  
145 and the power to contract with a public or private entity to  
146 manage and operate such facilities or to provide or receive  
147 facilities, services, or products. Except as may be limited by  
148 the interlocal agreement under which the entity is created, all  
149 of the privileges, benefits, powers, and terms of s. 125.01,  
150 relating to counties, and s. 166.021, relating to  
151 municipalities, are fully applicable to the entity. However,  
152 neither the entity nor any of its members on behalf of the  
153 entity may exercise the power of eminent domain over the  
154 facilities or property of any existing water or wastewater plant  
155 utility system, nor may the entity acquire title to any water or  
156 wastewater plant utility facilities, other facilities, or  
157 property which was acquired by the use of eminent domain after  
158 the effective date of this act. Bonds, notes, and other  
159 obligations issued by the entity are issued on behalf of the  
160 public agencies that are members of the entity.

161 ~~8.2-~~ Any entity created under this section may also issue  
162 bond anticipation notes in connection with the authorization,  
163 issuance, and sale of bonds. The bonds may be issued as serial

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164 | bonds or as term bonds or both. Any entity may issue capital  
165 | appreciation bonds or variable rate bonds. Any bonds, notes, or  
166 | other obligations must be authorized by resolution of the  
167 | governing body of the entity and bear the date or dates; mature  
168 | at the time or times, not exceeding 40 years from their  
169 | respective dates; bear interest at the rate or rates; be payable  
170 | at the time or times; be in the denomination; be in the form;  
171 | carry the registration privileges; be executed in the manner; be  
172 | payable from the sources and in the medium or payment and at the  
173 | place; and be subject to the terms of redemption, including  
174 | redemption prior to maturity, as the resolution may provide. If  
175 | any officer whose signature, or a facsimile of whose signature,  
176 | appears on any bonds, notes, or other obligations ceases to be  
177 | an officer before the delivery of the bonds, notes, or other  
178 | obligations, the signature or facsimile is valid and sufficient  
179 | for all purposes as if he or she had remained in office until  
180 | the delivery. The bonds, notes, or other obligations may be sold  
181 | at public or private sale for such price as the governing body  
182 | of the entity shall determine. Pending preparation of the  
183 | definitive bonds, the entity may issue interim certificates,  
184 | which shall be exchanged for the definitive bonds. The bonds may  
185 | be secured by a form of credit enhancement, if any, as the  
186 | entity deems appropriate. The bonds may be secured by an  
187 | indenture of trust or trust agreement. In addition, the  
188 | governing body of the legal entity may delegate, to an officer,  
189 | official, or agent of the legal entity as the governing body of  
190 | the legal entity may select, the power to determine the time;  
191 | manner of sale, public or private; maturities; rate of interest,

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192 | which may be fixed or may vary at the time and in accordance  
193 | with a specified formula or method of determination; and other  
194 | terms and conditions as may be deemed appropriate by the  
195 | officer, official, or agent so designated by the governing body  
196 | of the legal entity. However, the amount and maturity of the  
197 | bonds, notes, or other obligations and the interest rate of the  
198 | bonds, notes, or other obligations must be within the limits  
199 | prescribed by the governing body of the legal entity and its  
200 | resolution delegating to an officer, official, or agent the  
201 | power to authorize the issuance and sale of the bonds, notes, or  
202 | other obligations.

203 |        ~~9.3-~~ Bonds, notes, or other obligations issued under this  
204 | paragraph ~~subparagraph 1-~~ may be validated as provided in  
205 | chapter 75. The complaint in any action to validate the bonds,  
206 | notes, or other obligations must be filed only in the Circuit  
207 | Court for Leon County. The notice required to be published by s.  
208 | 75.06 must be published in Leon County and in each county that  
209 | is a member of the entity issuing the bonds, notes, or other  
210 | obligations, or in which a member of the entity is located, and  
211 | the complaint and order of the circuit court must be served only  
212 | on the State Attorney of the Second Judicial Circuit and on the  
213 | state attorney of each circuit in each county that is a member  
214 | of the entity issuing the bonds, notes, or other obligations or  
215 | in which a member of the entity is located. Section 75.04(2)  
216 | does not apply to a complaint for validation brought by the  
217 | legal entity.

218 |        ~~10.4-~~ The accomplishment of the authorized purposes of a  
219 | legal entity created under this paragraph is in all respects for

220 the benefit of the people of the state, for the increase of  
 221 their commerce and prosperity, and for the improvement of their  
 222 health and living conditions. Since the legal entity will  
 223 perform essential governmental functions in accomplishing its  
 224 purposes, the legal entity is not required to pay any taxes or  
 225 assessments of any kind whatsoever upon any property acquired or  
 226 used by it for such purposes or upon any revenues at any time  
 227 received by it. The bonds, notes, and other obligations of an  
 228 entity, their transfer and the income therefrom, including any  
 229 profits made on the sale thereof, are at all times free from  
 230 taxation of any kind by the state or by any political  
 231 subdivision or other agency or instrumentality thereof. The  
 232 exemption granted in this subparagraph is not applicable to any  
 233 tax imposed by chapter 220 on interest, income, or profits on  
 234 debt obligations owned by corporations.

235 Section 2. Section 367.0813, Florida Statutes, is created  
 236 to read:

237 367.0813 Gain or loss on purchase or condemnation by  
 238 governmental authority.--In order to provide appropriate  
 239 incentives to encourage the private sector to participate in the  
 240 investment in water and wastewater infrastructure, to protect  
 241 private-sector property rights of a utility's shareholders, and  
 242 to avoid additional burden of costs placed on ratepayers by  
 243 relitigating this issue, the Legislature affirms and clarifies  
 244 the clear policy of this state that gains or losses from a  
 245 purchase or condemnation of a utility's assets that results in  
 246 the loss of customers served by such assets and the associated  
 247 future revenue streams shall be borne by the shareholders of the

248 utility. This section shall apply to all transactions prior to,  
 249 on, and after the effective date of this section.

250 Section 3. Subsection (1) of section 367.145, Florida  
 251 Statutes, is amended to read:

252 367.145 Regulatory assessment and application fees.--

253 (1) The commission shall set by rule a regulatory  
 254 assessment fee that each utility must pay in accordance with s.  
 255 350.113(3); however, each small utility with annual revenues of  
 256 less than \$200,000 shall pay once a year in conjunction with  
 257 filing its annual financial report required by commission rule.  
 258 Notwithstanding any provision of law to the contrary, the amount  
 259 of the regulatory assessment fee shall not exceed 4.5 percent of  
 260 the gross revenues of the utility derived from intrastate  
 261 business, excluding sales for resale made to a regulated  
 262 company.

263 (a) A governmental authority to which ownership or control  
 264 of a utility is transferred is not liable for any fees owed the  
 265 commission by the utility as of the date of transfer. However,  
 266 whenever a purchase at wholesale is made of any water or  
 267 wastewater service and a fee is paid or payable thereon by the  
 268 selling utility and the utility purchasing such water or  
 269 wastewater service resells the same directly to customers, the  
 270 purchasing utility is entitled to, and must receive, credit on  
 271 such fees as may be due by it under this section to the extent  
 272 of the fee paid or payable upon such water or wastewater service  
 273 by the utility from which such purchase was made. All such fee  
 274 payments and penalties must be deposited in accordance with s.  
 275 350.113.

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

280 Section 4. If any provision of this act or its application  
281 to any person or circumstance is held invalid, the invalidity  
282 does not affect other provisions or applications of this act  
283 which can be given effect without the invalid provision or  
284 application and to this end the provisions of this act are  
285 declared severable.

286 Section 5. This act shall take effect upon becoming a law  
287 and shall apply to all contracts pending on or after that date.