

By the Committee on Finance and Taxation; and Senator Bennett

314-2468-04

1                                   A bill to be entitled  
2           An act relating to regulatory assessment fees;  
3           amending s. 163.01, F.S.; revising provisions  
4           for a separate legal entity to acquire, own,  
5           construct, improve, operate, and manage or  
6           finance certain public facilities; defining  
7           terms; requiring certain notice to host  
8           government by the separate legal entity that  
9           seeks to acquire any utility; providing  
10          procedures for the host government to accept or  
11          reject the proposal; requiring the separate  
12          legal entity to accept the host government as a  
13          member upon adoption of a membership resolution  
14          by the host government; providing for the  
15          separate legal entity to proceed with the  
16          acquisition if the host government does not  
17          act; requiring any transfer or payment by the  
18          separate legal entity to a member or other  
19          local government to be solely from user fees or  
20          other charges or revenues generated from  
21          customers that are physically located within  
22          the jurisdictional or service delivery  
23          boundaries of the member or local government  
24          receiving the transfer or payment; creating s.  
25          367.0813, F.S.; clarifying state policy that  
26          specifies that gains or losses from a purchase  
27          or condemnation of a utility's assets which  
28          result in the loss of customers served by such  
29          assets and the associated future revenue  
30          streams shall be borne by the shareholders of  
31          the utility; providing for severability;

1 providing for application; amending s. 367.145,  
2 F.S., requiring large water and wastewater  
3 utilities to pay regulatory assessment fees  
4 semiannually; requiring small utilities with  
5 revenues less than a certain amount to pay  
6 annually; providing an effective date.  
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8 Be It Enacted by the Legislature of the State of Florida:  
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10 Section 1. Paragraph (g) of subsection (7) of section  
11 163.01, Florida Statutes, is amended to read:

12 163.01 Florida Interlocal Cooperation Act of 1969.--  
13 (7)

14 (g)1. Notwithstanding any other provisions of this  
15 section, any separate legal entity created under this section,  
16 the membership of which is limited to municipalities and  
17 counties of the state, and which may include a special  
18 district in addition to a municipality or county or both, may  
19 acquire, own, construct, improve, operate, and manage public  
20 facilities, or finance facilities on behalf of any person,  
21 relating to a governmental function or purpose, including, but  
22 not limited to, wastewater facilities, water or alternative  
23 water supply facilities, and water reuse facilities, which may  
24 serve populations within or outside of the members of the  
25 entity. Notwithstanding s. 367.171(7), any separate legal  
26 entity created under this paragraph is not subject to Public  
27 Service Commission jurisdiction. The separate legal entity ~~and~~  
28 may not provide utility services within the service area of an  
29 existing utility system unless it has received the consent of  
30 the utility.

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

1           a. "Host government" means the governing body of the  
2 county, if the largest number of equivalent residential  
3 connections currently served by a system of the utility is  
4 located in the unincorporated area, or the governing body of a  
5 municipality, if the largest number of equivalent residential  
6 connections currently served by a system of the utility is  
7 located within that municipality's boundaries.

8           b. "Separate legal entity" means any entity created by  
9 interlocal agreement the membership of which is limited to two  
10 or more special districts, municipalities, or counties of the  
11 state, but which entity is legally separate and apart from any  
12 of its member governments.

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

16           d. "Utility" means a water or wastewater utility and  
17 includes every person, separate legal entity, lessee, trustee,  
18 or receiver owning, operating, managing, or controlling a  
19 system, or proposing construction of a system, who is  
20 providing, or proposes to provide, water or wastewater service  
21 to the public for compensation.

22           3. A separate legal entity that seeks to acquire any  
23 utility shall notify the host government in writing by  
24 certified mail about the contemplated acquisition not less  
25 than 30 days before any proposed transfer of ownership, use,  
26 or possession of any utility assets by such separate legal  
27 entity. The potential acquisition notice shall be provided to  
28 the legislative head of the governing body of the host  
29 government and to its chief administrative officer and shall  
30 provide the name and address of a contact person for the  
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1 separate legal entity and information identified in s.  
2 367.071(4)(a) concerning the contemplated acquisition.

3 4.a. Within 30 days following receipt of the notice,  
4 the host government may adopt a resolution to become a member  
5 of the separate legal entity, adopt a resolution to approve  
6 the utility acquisition, or adopt a resolution to prohibit the  
7 utility acquisition by the separate legal entity if the host  
8 government determines that the proposed acquisition is not in  
9 the public interest. A resolution adopted by the host  
10 government which prohibits the acquisition may include  
11 conditions that would make the proposal acceptable to the host  
12 government.

13 b. If a host government adopts a membership  
14 resolution, the separate legal entity shall accept the host  
15 government as a member on the same basis as its existing  
16 members before any transfer of ownership, use, or possession  
17 of the utility or the utility facilities. If a host government  
18 adopts a resolution to approve the utility acquisition, the  
19 separate legal entity may complete the acquisition. If a host  
20 government adopts a prohibition resolution, the separate legal  
21 entity may not acquire the utility within that host  
22 government's territory without the specific consent of the  
23 host government by future resolution. If a host government  
24 does not adopt a prohibition resolution or an approval  
25 resolution, the separate legal entity may proceed to acquire  
26 the utility after the 30-day notice period without further  
27 notice.

28 5. After the acquisition or construction of any  
29 utility systems by a separate legal entity created under this  
30 paragraph revenues or any other income may not be transferred  
31 or paid to a member of a separate legal entity, or to any

1 other special district, county, or municipality, from user  
2 fees or other charges or revenues generated from customers  
3 that are not physically located within the jurisdictional or  
4 service delivery boundaries of the member, special district,  
5 county, or municipality receiving the transfer or payment. Any  
6 transfer or payment to a member, special district, or other  
7 local government must be solely from user fees or other  
8 charges or revenues generated from customers that are  
9 physically located within the jurisdictional or service  
10 delivery boundaries of the member, special district, or local  
11 government receiving the transfer of payment.

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

17 7. The entity may finance or refinance the  
18 acquisition, construction, expansion, and improvement of such  
19 facilities relating to a governmental function or purpose  
20 through the issuance of its bonds, notes, or other obligations  
21 under this section or as otherwise authorized by law. The  
22 entity has all the powers provided by the interlocal agreement  
23 under which it is created or which are necessary to finance,  
24 own, operate, or manage the public facility, including,  
25 without limitation, the power to establish rates, charges, and  
26 fees for products or services provided by it, the power to  
27 levy special assessments, the power to sell or finance all or  
28 a portion of such facility, and the power to contract with a  
29 public or private entity to manage and operate such facilities  
30 or to provide or receive facilities, services, or products.  
31 Except as may be limited by the interlocal agreement under

1 which the entity is created, all of the privileges, benefits,  
2 powers, and terms of s. 125.01, relating to counties, and s.  
3 166.021, relating to municipalities, are fully applicable to  
4 the entity. However, neither the entity nor any of its members  
5 on behalf of the entity may exercise the power of eminent  
6 domain over the facilities or property of any existing water  
7 or wastewater plant utility system, nor may the entity acquire  
8 title to any water or wastewater plant utility facilities,  
9 other facilities, or property which was acquired by the use of  
10 eminent domain after the effective date of this act. Bonds,  
11 notes, and other obligations issued by the entity are issued  
12 on behalf of the public agencies that are members of the  
13 entity.

14 8.2. Any entity created under this section may also  
15 issue bond anticipation notes in connection with the  
16 authorization, issuance, and sale of bonds. The bonds may be  
17 issued as serial bonds or as term bonds or both. Any entity  
18 may issue capital appreciation bonds or variable rate bonds.  
19 Any bonds, notes, or other obligations must be authorized by  
20 resolution of the governing body of the entity and bear the  
21 date or dates; mature at the time or times, not exceeding 40  
22 years from their respective dates; bear interest at the rate  
23 or rates; be payable at the time or times; be in the  
24 denomination; be in the form; carry the registration  
25 privileges; be executed in the manner; be payable from the  
26 sources and in the medium or payment and at the place; and be  
27 subject to the terms of redemption, including redemption prior  
28 to maturity, as the resolution may provide. If any officer  
29 whose signature, or a facsimile of whose signature, appears on  
30 any bonds, notes, or other obligations ceases to be an officer  
31 before the delivery of the bonds, notes, or other obligations,

1 the signature or facsimile is valid and sufficient for all  
2 purposes as if he or she had remained in office until the  
3 delivery. The bonds, notes, or other obligations may be sold  
4 at public or private sale for such price as the governing body  
5 of the entity shall determine. Pending preparation of the  
6 definitive bonds, the entity may issue interim certificates,  
7 which shall be exchanged for the definitive bonds. The bonds  
8 may be secured by a form of credit enhancement, if any, as the  
9 entity deems appropriate. The bonds may be secured by an  
10 indenture of trust or trust agreement. In addition, the  
11 governing body of the legal entity may delegate, to an  
12 officer, official, or agent of the legal entity as the  
13 governing body of the legal entity may select, the power to  
14 determine the time; manner of sale, public or private;  
15 maturities; rate of interest, which may be fixed or may vary  
16 at the time and in accordance with a specified formula or  
17 method of determination; and other terms and conditions as may  
18 be deemed appropriate by the officer, official, or agent so  
19 designated by the governing body of the legal entity. However,  
20 the amount and maturity of the bonds, notes, or other  
21 obligations and the interest rate of the bonds, notes, or  
22 other obligations must be within the limits prescribed by the  
23 governing body of the legal entity and its resolution  
24 delegating to an officer, official, or agent the power to  
25 authorize the issuance and sale of the bonds, notes, or other  
26 obligations.

27 9.3. Bonds, notes, or other obligations issued under  
28 this paragraph ~~subparagraph 1~~ may be validated as provided in  
29 chapter 75. The complaint in any action to validate the bonds,  
30 notes, or other obligations must be filed only in the Circuit  
31 Court for Leon County. The notice required to be published by

1 s. 75.06 must be published in Leon County and in each county  
2 that is a member of the entity issuing the bonds, notes, or  
3 other obligations, or in which a member of the entity is  
4 located, and the complaint and order of the circuit court must  
5 be served only on the State Attorney of the Second Judicial  
6 Circuit and on the state attorney of each circuit in each  
7 county that is a member of the entity issuing the bonds,  
8 notes, or other obligations or in which a member of the entity  
9 is located. Section 75.04(2) does not apply to a complaint for  
10 validation brought by the legal entity.

11 10.4. The accomplishment of the authorized purposes of  
12 a legal entity created under this paragraph is in all respects  
13 for the benefit of the people of the state, for the increase  
14 of their commerce and prosperity, and for the improvement of  
15 their health and living conditions. Since the legal entity  
16 will perform essential governmental functions in accomplishing  
17 its purposes, the legal entity is not required to pay any  
18 taxes or assessments of any kind whatsoever upon any property  
19 acquired or used by it for such purposes or upon any revenues  
20 at any time received by it. The bonds, notes, and other  
21 obligations of an entity, their transfer and the income  
22 therefrom, including any profits made on the sale thereof, are  
23 at all times free from taxation of any kind by the state or by  
24 any political subdivision or other agency or instrumentality  
25 thereof. The exemption granted in this subparagraph is not  
26 applicable to any tax imposed by chapter 220 on interest,  
27 income, or profits on debt obligations owned by corporations.

28 Section 2. Section 367.0813, Florida Statutes, is  
29 created to read:

30 367.0813 Gain or loss on purchase or condemnation by  
31 governmental authority.--In order to provide appropriate



1 incentives to encourage the private sector to participate in  
2 the investment in water and wastewater infrastructure, to  
3 protect private sector property rights of a utility's  
4 shareholders, and to avoid an additional burden of costs  
5 placed on ratepayers by relitigating this issue, the  
6 Legislature affirms and clarifies the clear policy of this  
7 state that gains or losses from a purchase or condemnation of  
8 a utility's assets which results in the loss of customers  
9 served by such assets and the associated future revenue  
10 streams shall be borne by the shareholders of the utility.  
11 This section applies to all transactions prior to and after  
12 the effective date of this section.

13           Section 3. If any provision of this act or its  
14 application to any person or circumstance is held invalid, the  
15 invalidity does not affect other provisions or applications of  
16 this act which can be given effect without the invalid  
17 provision or application, and to this end the provisions of  
18 this act are declared severable.

19           Section 4. Subsection (1) of section 367.145, Florida  
20 Statutes, is amended to read:

21           367.145 Regulatory assessment and application fees.--

22           (1) The commission shall set by rule a regulatory  
23 assessment fee that each utility must pay in accordance with  
24 s. 350.113(3); however, each small utility with annual  
25 revenues of less than \$200,000 shall pay once a year in  
26 conjunction with filing its annual financial report required  
27 by commission rule. Notwithstanding any provision of law to  
28 the contrary, the amount of the regulatory assessment fee  
29 shall not exceed 4.5 percent of the gross revenues of the  
30 utility derived from intrastate business, excluding sales for  
31 resale made to a regulated company.

1           (a) A governmental authority to which ownership or  
2 control of a utility is transferred is not liable for any fees  
3 owed the commission by the utility as of the date of transfer.  
4 However, whenever a purchase at wholesale is made of any water  
5 or wastewater service and a fee is paid or payable thereon by  
6 the selling utility and the utility purchasing such water or  
7 wastewater service resells the same directly to customers, the  
8 purchasing utility is entitled to, and must receive, credit on  
9 such fees as may be due by it under this section to the extent  
10 of the fee paid or payable upon such water or wastewater  
11 service by the utility from which such purchase was made. All  
12 such fee payments and penalties must be deposited in  
13 accordance with s. 350.113.

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

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

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2   COMMITTEE SUBSTITUTE FOR  
3   SB 1922

4 This committee substitute revises provisions under chapter  
5 163, the "Florida Interlocal Cooperation Act of 1969",  
6 relating to a separate legal entity that wants to acquire,  
7 own, construct, improve, operate, and manage or finance a  
8 public utility. The committee substitute provides definitions  
9 for the following terms as used in s. 163.01(7): "host  
10 government"; "separate legal entity"; "system"; and "utility".

11 The committee substitute provides procedures for a host  
12 government to accept or reject the separate legal entity's  
13 proposal.

14 The committee substitute requires that any transfer or payment  
15 by a separate legal entity to another local government must be  
16 made solely from user fees or other charges or revenues  
17 generated from customers that are physically located within  
18 the jurisdictional or service delivery boundaries of the local  
19 government receiving the transfer or payment.

20 The committee substitute also codifies existing law regarding  
21 what happens to any gains or losses in the purchase of a  
22 privately-owned utility by specifying that any loss in future  
23 revenues must be borne by the shareholders of the utility.

24 The committee substitute provides for a severability clause.

25 The committee substitute changes the effective date from July  
26 1, 2004, to upon becoming a law and shall apply to all  
27 contracts pending on or after that date.

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