

By Senator Atwater

25-1656A-04

See HB 1583

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

1 notice of the proposed change; providing for
2 negotiations to resolve concerns of the host
3 government; providing for binding arbitration
4 by the commission; requiring the commission to
5 develop and adopt administrative rules
6 governing the arbitration process and
7 establishing fees; requiring any transfer or
8 payment by the separate legal entity to a
9 member or other local government to be solely
10 from user fees or other charges or revenues
11 generated from customers that are physically
12 located within the jurisdictional or service
13 delivery boundaries of the member or local
14 government receiving the transfer or payment;
15 authorizing a host government to acquire any
16 utility or utility system that it hosts that is
17 owned by the separate legal entity; providing
18 for limitation of powers and authority of the
19 separate legal entity by the terms and
20 conditions of the utility acquisition
21 agreement; amending s. 120.52, F.S.; revising
22 the definition of "agency" to include a
23 separate legal entity for purposes of the
24 Administrative Procedure Act; amending ss.
25 367.021 and 367.071, F.S.; revising the
26 definition of "governmental authority" to
27 exclude a separate legal entity for purposes of
28 the Water and Wastewater System Regulatory Law;
29 creating s. 367.0813, F.S.; clarifying state
30 policy that gains or losses from a purchase or
31 condemnation of a utility's assets that results

1 in the loss of customers served by such assets
2 and the associated future revenue streams shall
3 be borne by the shareholders of the utility;
4 providing for severability; providing for
5 application; providing an effective date.
6

7 Be It Enacted by the Legislature of the State of Florida:
8

9 Section 1. Paragraph (g) of subsection (7) of section
10 163.01, Florida Statutes, is amended to read:

11 163.01 Florida Interlocal Cooperation Act of 1969.--
12 (7)

13 (g)1. Notwithstanding any other provisions of this
14 section, any separate legal entity created under this section,
15 the membership of which is limited to municipalities and
16 counties of the state, may acquire, own, construct, improve,
17 operate, and manage public facilities, or finance facilities
18 on behalf of any person, relating to a governmental function
19 or purpose, including, but not limited to, wastewater
20 facilities, water or alternative water supply facilities, and
21 water reuse facilities, which may serve populations within or
22 outside of the members of the entity. Notwithstanding s.
23 367.171(7), any separate legal entity created under this
24 paragraph is not subject to Public Service Commission
25 jurisdiction unless the host government or at least 10 percent
26 of the customers of the utility system being acquired file a
27 petition with the commission seeking approval of the
28 acquisition of the utility system by the separate legal entity
29 and seeking binding arbitration by the commission of proposed
30 changes to the initial or subsequent rates and charges of the
31 separate legal entity. The separate legal entity ~~and~~ may not

1 provide utility services within the service area of an
2 existing utility system unless it has received the consent of
3 the utility.

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

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

12 b. "Separate legal entity" means any entity created by
13 interlocal agreement the membership of which is limited to two
14 or more municipalities or counties of the state but which
15 entity is legally separate and apart from any of its member
16 governments.

17 c. "System" means each separate water or wastewater
18 facility providing service.

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

25 3. A separate legal entity that seeks to acquire any
26 utility must notify the Public Service Commission and the host
27 government in writing by certified mail about the contemplated
28 acquisition not less than 30 days before any proposed transfer
29 of ownership, use, or possession of any utility assets by such
30 separate legal entity. The potential acquisition notice must
31 be provided to the legislative head of the governing body of

1 the host government and to its chief administrative officer
2 and must provide the name and address of a contact person for
3 the separate legal entity and information identified in s.
4 367.071(4)(a) concerning the contemplated acquisition.

5 4.a. Within 30 days following receipt of the notice,
6 the host government may adopt a resolution to become a member
7 of the separate legal entity, adopt a resolution to approve
8 the utility acquisition, adopt a resolution to prohibit the
9 utility acquisition by the separate legal entity if the host
10 government determines that the proposed acquisition is not in
11 the public interest, or request in writing an automatic 45-day
12 extension of the 30-day period in order to allow sufficient
13 time for the host government to evaluate the proposed
14 acquisition. A resolution adopted by the host government that
15 prohibits the acquisition may include conditions that would
16 make the proposal acceptable to the host government.

17 b. If a host government adopts a membership
18 resolution, the separate legal entity must accept the host
19 government as a member on the same basis as its existing
20 members before any transfer of ownership, use, or possession
21 of the utility or the utility facilities. If a host government
22 adopts a resolution to approve the utility acquisition, the
23 two parties shall enter into negotiations to complete the
24 utility acquisition agreement. If a host government adopts a
25 prohibition resolution, the separate legal entity may not
26 acquire the utility within that host government's territory
27 without the specific consent of the host government by future
28 resolution. If a host government does not adopt a prohibition
29 resolution or an approval resolution, does not provide a
30 written request for an extension of the 30-day notice period,
31 and takes no action to initiate judicial proceedings regarding

1 the proposed acquisition, the separate legal entity may
2 proceed to acquire the utility after the 30-day notice period
3 without further notice.

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

9 5. In addition to the host government's right to
10 review as fair and reasonable the rates, charges, customer
11 classifications, and terms of service that will be in place at
12 the time of acquisition, the host government has the right to
13 review and approve as fair and reasonable any later changes
14 proposed by the separate legal entity to the rates, charges,
15 customer classifications, and terms of service before adoption
16 by the separate legal entity. In addition, the host government
17 has the right to review and approve any changes to the
18 financing of such facilities which may result in increased
19 costs to customers. Such right of review and approval by the
20 host government is subject to the obligation of the separate
21 legal entity to establish rates and charges that comply with
22 the requirements contained in any resolution or trust
23 agreement relating to the issuance of bonds to acquire and
24 improve the affected utility and such right does not affect
25 the obligation of the separate legal entity to set rates at a
26 level sufficient to pay debt service on its obligations issued
27 in relation to the host government utility.

28 6.a. In order to facilitate review of proposed changes
29 by the host government, the separate legal entity must notify
30 the host government in writing by certified mail about the
31 proposed changes not fewer than 90 days before it implements

1 any changes. The notice of proposed changes must be provided
2 to the legislative head of the governing body of each host
3 government and to its chief administrative officer and must
4 provide the name and address of a contact person for the
5 separate legal entity and information identified in s.
6 367.081(2)(a)1. as it applies to publicly owned utilities
7 about the proposed changes. If, after review, the host
8 government believes that the proposed changes are in the
9 public interest, the host government may pass a resolution
10 approving the proposed changes. If, after review, the host
11 government believes that the proposed changes are not in the
12 public interest, the host government may enter into
13 negotiation with the separate legal entity to resolve those
14 concerns.

15 b. If no agreement is reached within 30 days after the
16 host government's determination that the proposed changes are
17 not in the public interest, the host government or the
18 separate legal entity may request and, if requested, shall
19 receive binding arbitration services through the Public
20 Service Commission to resolve the dispute with the separate
21 legal entity. The commission shall develop and adopt
22 administrative rules governing the arbitration process and
23 establishing fees for this dispute-resolution service. The
24 arbitration shall be conducted by the commission within 90
25 days after the request by the host government or the separate
26 legal entity. The commission's arbitration order shall ensure
27 that the new rates of the separate legal entity applicable to
28 a specific host government recover applicable costs of
29 service, including costs of financing, and provide for a
30 reasonable rate of return.

31

1 7. After the acquisition or construction of any
2 utility systems by a separate legal entity created under this
3 paragraph revenues or any other income may not be transferred
4 or paid to a member of a separate legal entity, or to any
5 other county or municipality, from user fees or other charges
6 or revenues generated from customers that are not physically
7 located within the jurisdictional or service delivery
8 boundaries of the member, county, or municipality receiving
9 the transfer or payment. Any transfer or payment to a member
10 or other local government must be solely from user fees or
11 other charges or revenues generated from customers that are
12 physically located within the jurisdictional or service
13 delivery boundaries of the member or local government
14 receiving the transfer or payment.

15 8. A host government may acquire any utility or
16 utility system that it hosts that is owned by the separate
17 legal entity. If the separate legal entity and the host
18 government cannot agree on the terms and conditions of the
19 acquisition, the host government may institute eminent domain
20 proceedings under chapter 73 or chapter 74, as applicable.
21 This paragraph is an alternative provision otherwise provided
22 by law as authorized in s. 4, Art. VIII of the State
23 Constitution for any transfer of power as a result of an
24 acquisition of a utility by a separate legal entity from a
25 municipality, county, or special district.

26 9. The entity may finance or refinance the
27 acquisition, construction, expansion, and improvement of such
28 facilities relating to a governmental function or purpose
29 through the issuance of its bonds, notes, or other obligations
30 under this section or as otherwise authorized by law. Except
31 as limited by the terms and conditions of the utility

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

27 10.2. Except as limited by the terms and conditions of
28 the utility acquisition agreement, as approved by the
29 applicable host government and subject to approval by the
30 Public Service Commission if a petition is filed pursuant to
31 subparagraph 1., any entity created under this section may

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

1 maturities; rate of interest, which may be fixed or may vary
2 at the time and in accordance with a specified formula or
3 method of determination; and other terms and conditions as may
4 be deemed appropriate by the officer, official, or agent so
5 designated by the governing body of the legal entity. However,
6 the amount and maturity of the bonds, notes, or other
7 obligations and the interest rate of the bonds, notes, or
8 other obligations must be within the limits prescribed by the
9 governing body of the legal entity and its resolution
10 delegating to an officer, official, or agent the power to
11 authorize the issuance and sale of the bonds, notes, or other
12 obligations.

13 11.3. Bonds, notes, or other obligations issued under
14 this paragraph ~~subparagraph 1.~~ may be validated as provided in
15 chapter 75. The complaint in any action to validate the bonds,
16 notes, or other obligations must be filed only in the Circuit
17 Court for Leon County. The notice required to be published by
18 s. 75.06 must be published in Leon County and in each county
19 that is a member of the entity issuing the bonds, notes, or
20 other obligations, or in which a member of the entity is
21 located, and the complaint and order of the circuit court must
22 be served only on the State Attorney of the Second Judicial
23 Circuit and on the state attorney of each circuit in each
24 county that is a member of the entity issuing the bonds,
25 notes, or other obligations or in which a member of the entity
26 is located. Section 75.04(2) does not apply to a complaint for
27 validation brought by the legal entity.

28 12.4. The accomplishment of the authorized purposes of
29 a legal entity created under this paragraph is in all respects
30 for the benefit of the people of the state, for the increase
31 of their commerce and prosperity, and for the improvement of

1 their health and living conditions. Since the legal entity
2 will perform essential governmental functions in accomplishing
3 its purposes, the legal entity is not required to pay any
4 taxes or assessments of any kind whatsoever upon any property
5 acquired or used by it for such purposes or upon any revenues
6 at any time received by it. The bonds, notes, and other
7 obligations of an entity, their transfer and the income
8 therefrom, including any profits made on the sale thereof, are
9 at all times free from taxation of any kind by the state or by
10 any political subdivision or other agency or instrumentality
11 thereof. The exemption granted in this subparagraph is not
12 applicable to any tax imposed by chapter 220 on interest,
13 income, or profits on debt obligations owned by corporations.

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

16 120.52 Definitions.--As used in this act:

17 (1) "Agency" means:

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

20 (b) Each:

21 1. State officer and state department, and each
22 departmental unit described in s. 20.04.

23 2. Authority, including a regional water supply
24 authority.

25 3. Board.

26 4. Commission, including the Commission on Ethics and
27 the Fish and Wildlife Conservation Commission when acting
28 pursuant to statutory authority derived from the Legislature.

29 5. Regional planning agency.

30 6. Multicounty special district with a majority of its
31 governing board comprised of nonelected persons.

1 7. Educational units.
2 8. Entity described in chapters 163, 373, 380, and 582
3 and s. 186.504.

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

8
9 This definition does not include any legal entity or agency
10 created in whole or in part pursuant to chapter 361, part II,
11 any metropolitan planning organization created pursuant to s.
12 339.175, any separate legal or administrative entity created
13 pursuant to s. 339.175 of which a metropolitan planning
14 organization is a member, an expressway authority pursuant to
15 chapter 348, any legal or administrative entity created by an
16 interlocal agreement pursuant to s. 163.01(7), except those
17 created pursuant to s. 163.01(7)(g)1., unless any party to
18 such agreement is otherwise an agency as defined in this
19 subsection, or any multicounty special district with a
20 majority of its governing board comprised of elected persons;
21 however, this definition shall include a regional water supply
22 authority.

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

25 367.021 Definitions.--As used in this chapter, the
26 following words or terms shall have the meanings indicated:

27 (7) "Governmental authority" means a political
28 subdivision, as defined by s. 1.01(8), a regional water supply
29 authority created pursuant to s. 373.1962, or a nonprofit
30 corporation formed for the purpose of acting on behalf of a
31 political subdivision with respect to a water or wastewater

1 facility; however, this definition shall exclude a separate
2 legal entity created pursuant to s. 163.01(7)(g)1.

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

5 367.071 Sale, assignment, or transfer of certificate
6 of authorization, facilities, or control.--

7 (1) A ~~No~~ utility may not ~~shall~~ sell, assign, or
8 transfer its certificate of authorization, facilities or any
9 portion thereof, or majority organizational control without
10 determination and approval of the commission that the proposed
11 sale, assignment, or transfer is in the public interest and
12 that the buyer, assignee, or transferee will fulfill the
13 commitments, obligations, and representations of the utility.
14 However, a sale, assignment, or transfer of its certificate of
15 authorization, facilities or any portion thereof, or majority
16 organizational control may occur prior to commission approval
17 if the contract for sale, assignment, or transfer is made
18 contingent upon commission approval.

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

21 (a) The sale of facilities, in whole or part, to a
22 governmental authority, as defined in s. 367.021(7), shall be
23 approved as a matter of right; however, the governmental
24 authority shall, prior to taking any official action, obtain
25 from the utility or commission with respect to the facilities
26 to be sold the most recent available income and expense
27 statement, balance sheet, and statement of rate base for
28 regulatory purposes and contributions-in-aid-of-construction.
29 Any request for rate relief pending before the commission at
30 the time of sale is deemed to have been withdrawn. Interim
31 rates, if previously approved by the commission, must be

1 discontinued, and any money collected pursuant to interim rate
2 relief must be refunded to the customers of the utility with
3 interest.

4 (b) When paragraph (a) does not apply, the commission
5 shall amend the certificate of authorization as necessary to
6 reflect the change resulting from the sale, assignment, or
7 transfer.

8 Section 5. Section 367.0813, Florida Statutes, is
9 created to read:

10 367.0813 Gain or loss on purchase or condemnation by
11 governmental authority.--In order to provide appropriate
12 incentives to encourage the private sector to participate in
13 the investment in water and wastewater infrastructure, to
14 protect private-sector property rights of a utility's
15 shareholders, and to avoid additional burden of costs placed
16 on ratepayers by relitigating this issue, the Legislature
17 affirms and clarifies the clear policy of this state that
18 gains or losses from a purchase or condemnation of a utility's
19 assets which results in the loss of customers served by such
20 assets and the associated future revenue streams shall be
21 borne by the shareholders of the utility. This section shall
22 apply to all transactions prior to and after the effective
23 date of this section.

24 Section 6. If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 invalidity does not affect other provisions or applications of
27 this act which can be given effect without the invalid
28 provision or application, and to this end the provisions of
29 this act are declared severable.

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