

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 Senate Bill 2668

4 The committee substitute (CS) requires water and wastewater
5 utilities with annual revenues above \$200,000 that are
6 regulated by the Public Service Commission to pay regulatory
7 assessment fees every six months rather than every 12 months.
8 It adds to the possible membership of any separate legal
9 entity created under the Florida Interlocal Cooperation Act, a
10 special district in addition to a municipality or county or
11 both. The CS deletes language subjecting such a separate legal
12 entity to the jurisdiction of the Public Service Commission
13 (PSC) under certain circumstances.

14 In addition, the CS deletes a provision allowing a host
15 government to seek binding arbitration with the PSC. This CS
16 deletes a provision allowing the host government to review
17 subsequent changes to the rates, charges, customer
18 classifications, and terms of service proposed by the separate
19 legal entity after the acquisition of the utility. It
20 eliminates language specifically authorizing a host government
21 to acquire a utility within its jurisdiction from the separate
22 legal entity through the use of eminent domain. The CS deletes
23 language providing that the powers exercised by the separate
24 legal entity under the terms of the interlocal agreement and
25 the entity's issuance of bond anticipation notes may be
26 limited by the terms and conditions of the utility acquisition
27 agreement as approved by the host government.

28 Finally, the CS deletes language excluding a separate legal
29 entity's purchase of a privately-owned utility by a
30 governmental authority to PSC approval as a matter of right.
31 This CS deletes language that would have subjected a separate
32 legal entity created under s. 163.01(7)(g)1., F.S., to the
33 Administrative Procedure Act under ch. 120, F.S., by including
34 such entity in the definition of "agency."