

By Senator Cowin

20-233-04

1 A bill to be entitled
2 An act relating to utilities; amending s.
3 163.01, F.S.; providing applicability of
4 provisions relating to ownership and operation
5 of utilities by entities composed of
6 municipalities and counties; prescribing powers
7 of counties and specified municipalities with
8 respect to acquisition of water utilities and
9 wastewater utilities by separate legal entities
10 composed of municipalities and counties;
11 authorizing the Public Service Commission to
12 review the acquisition of a utility by two or
13 more host governments; providing for a binding
14 arbitration process under the Public Service
15 Commission to resolve certain disputes relating
16 to utility acquisition; authorizing the
17 commission to adopt rules; requiring the Public
18 Service Commission to establish rules that base
19 the acquisition price for a host government to
20 acquire a utility on certain information;
21 amending s. 120.52, F.S.; deleting an exception
22 from the requirements of ch. 120, F.S., for an
23 entity created under s. 163.01(7)(g)1., F.S.;
24 amending s. 367.021, F.S.; excluding an entity
25 created under s. 163.01(7)(g)1., F.S., from the
26 definition of the term "governmental
27 authority"; amending s. 367.071, F.S.; deleting
28 a provision authorizing a utility to be sold or
29 transferred prior to approval of the Public
30 Service Commission with a contingency clause in
31

1 the contract; providing severability; providing
2 effective dates.

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4 Be It Enacted by the Legislature of the State of Florida:

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

8 163.01 Florida Interlocal Cooperation Act of 1969.--
9 (7)

10 (g)1. Notwithstanding any other provisions of this
11 section, any separate legal entity created under this section,
12 the membership of which is limited to municipalities and
13 counties of the state, may acquire, own, construct, improve,
14 operate, and manage public facilities, or finance facilities
15 on behalf of any person, relating to a governmental function
16 or purpose, including, but not limited to, wastewater
17 facilities, water or alternative water supply facilities, and
18 water reuse facilities, which may serve populations within or
19 outside of the members of the entity. Notwithstanding s.
20 367.171(7), any separate legal entity created under this
21 paragraph is not subject to Public Service Commission
22 jurisdiction, except when a host government specifically
23 requests binding arbitration services through the commission
24 under subparagraphs 4. and 5. and as is otherwise provided for
25 in general law. The separate legal entity ~~and~~ may not provide
26 utility services within the service area of an existing
27 utility system unless it has received the consent of the
28 utility.

29 2. For purposes of this paragraph, the term "utility"
30 means a water or wastewater utility and includes every person,
31 separate legal entity, lessee, trustee, or receiver owning,

1 operating, managing, or controlling a system, or proposing
2 construction of a system, who is providing, or proposes to
3 provide, water or wastewater service to the public for
4 compensation. For purposes of this paragraph, the term
5 "system" means each separate water or wastewater facility
6 providing service. For purposes of this paragraph, the term
7 "host government" means either the governing body of the
8 county, if the largest number of equivalent residential
9 connections currently served by a system of the utility is
10 located in the unincorporated area, or the governing body of a
11 municipality, if the largest number of equivalent residential
12 connections currently served by a system of the utility is
13 located within that municipality's boundaries. For purposes of
14 this paragraph, the term "separate legal entity" means any
15 entity created by interlocal agreement the membership of which
16 is limited to two or more municipalities or counties of the
17 state, but which entity is legally separate and apart from any
18 of its member governments. A separate legal entity that seeks
19 to acquire any utility must notify the host government in
20 writing by certified mail about the contemplated acquisition
21 not less than 90 days before any proposed transfer of
22 ownership, use, or possession of any utility assets by such
23 separate legal entity. The potential acquisition notice must
24 be provided to the legislative head of the governing body of
25 the host government and to its chief administrative officer
26 and must provide the name and address of a contact person for
27 the separate legal entity and information identified in s.
28 367.071(4)(a) concerning the contemplated acquisition.

29 3. Within 90 days following receipt of the notice, the
30 host government may adopt a resolution to become a member of
31 the separate legal entity; adopt a resolution to approve the

1 utility acquisition; adopt a resolution to prohibit the
2 utility acquisition by the separate legal entity if the host
3 government determines that the proposed acquisition is not in
4 the public interest; request in writing an automatic 45-day
5 extension of the 90-day period in order to allow sufficient
6 time for the host government to evaluate the proposed
7 acquisition; or take no action to agenda the proposed
8 acquisition for discussion at a public meeting, which shall be
9 construed as denial of the proposed acquisition. If a host
10 government adopts a prohibition resolution, the separate legal
11 entity may not acquire the utility within that host
12 government's territory without specific consent of the host
13 government by future resolution. If a host government adopts a
14 membership resolution, the separate legal entity must accept
15 the host government as a member before any transfer of
16 ownership, use, or possession of the utility or the utility
17 facilities on the same basis as its existing members. If a
18 host government does not adopt a prohibition resolution or an
19 approval resolution, does not provide a written request for an
20 extension of the 90-day notice period, and takes no action to
21 initiate judicial proceedings regarding the proposed
22 acquisition, the separate legal entity may proceed to acquire
23 the utility after the 90-day notice period without further
24 notice, except as otherwise agreed upon by the separate legal
25 entity and the host government. In utility acquisitions
26 involving two or more host governments, the Public Service
27 Commission shall consider whether the sale, assignment, or
28 transfer of the utility is in the public interest pursuant to
29 the provisions of s. 367.071(1).

30 4. In addition to the host government's right to
31 review as fair and reasonable the rates, charges, customer

1 classifications, and terms of service that will be in place at
2 the time of acquisition, the host government has the right to
3 review and approve as fair and reasonable any later changes
4 proposed by the separate legal entity to the rates, charges,
5 customer classifications, and terms of service before adoption
6 by the separate legal entity. In addition, the host government
7 has the right to review and approve any changes to the
8 financing of such facilities which may result in increased
9 costs to customers. Such right of review and approval by the
10 host government is subject to the obligation of the separate
11 legal entity to establish rates and charges that comply with
12 the requirements contained in any resolution or trust
13 agreement relating to the issuance of bonds to acquire and
14 improve the affected utility, and such right does not affect
15 the obligation of the separate legal entity to set rates at a
16 level sufficient to pay debt service on its obligations issued
17 in relation to the host government utility. In order to
18 facilitate review of proposed changes by such host government,
19 the separate legal entity must notify the host government in
20 writing by certified mail about the proposed changes not less
21 than 90 days before it implements any changes. The notice of
22 proposed changes must be provided to the legislative head of
23 the governing body of each host government and to its chief
24 administrative officer and must provide the name and address
25 of a contact person for the separate legal entity and
26 information identified in s. 367.081(2)(a)1. as it applies to
27 publicly owned utilities about the proposed changes. If, after
28 review, the host government believes that the proposed changes
29 are in the public interest, the host government may pass a
30 resolution approving the proposed changes. If, after review,
31 the host government believes that the proposed changes are not

1 in the public interest, the host government may enter into
2 negotiation with the separate legal entity to resolve those
3 concerns. If no agreement is reached within 30 days after the
4 host government's determination that the proposed changes are
5 not in the public interest, the host government may request
6 and, if requested, shall receive binding arbitration services
7 through the Public Service Commission to resolve the dispute
8 with the separate legal entity. The commission shall develop
9 and adopt administrative rules governing the arbitration
10 process and establishing fees for this dispute-resolution
11 service.

12 5. After the acquisition or construction of any
13 utility systems by a separate legal entity created under this
14 subsection, revenues or any other income may not be
15 transferred or paid to a member of a separate legal entity, or
16 to any other county or municipality, from user fees or other
17 charges or revenues generated from customers that are not
18 physically located within the jurisdictional or service
19 delivery boundaries of the member, county, or municipality
20 receiving the transfer or payment. Any transfer or payment to
21 a member or other local government must be solely from user
22 fees or other charges or revenues generated from customers
23 that are physically located within the jurisdictional or
24 service delivery boundaries of the member or local government
25 receiving the transfer or payment.

26 6. The host government is guaranteed the right to
27 acquire any utility or utility system that it hosts owned by
28 the separate legal entity. In those instances when the
29 separate legal entity and the host government cannot agree on
30 the terms and conditions of the acquisition, the host
31 government may request and, if requested, shall receive

1 binding arbitration services through the Public Service
2 Commission to resolve the disputed acquisition terms. The
3 commission shall develop and adopt administrative rules
4 governing the arbitration process and establishing the fees
5 for these services. In developing and adopting its rules
6 governing the acquisition price for a given host government to
7 acquire the utility or utility system located within its
8 jurisdiction, the Public Service Commission shall, to the
9 greatest extent possible, base the acquisition price on the
10 same percentage to the total bonded indebtedness of the
11 separate legal entity upon acquiring the utility as the
12 acquired system's rate base was to the utility's total rate
13 base at the time transferred from a regulated utility to the
14 separate legal entity. This paragraph is an alternative
15 provision otherwise provided by law as authorized in s. 4,
16 Art. VIII of the State Constitution for any transfer of power
17 as a result of an acquisition of a utility by a separate legal
18 entity from a municipality, county, or special district.

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

1 power to sell or finance all or a portion of such facility,
2 and the power to contract with a public or private entity to
3 manage and operate such facilities or to provide or receive
4 facilities, services, or products. Except as may be limited by
5 the interlocal agreement under which the entity is created,
6 all of the privileges, benefits, powers, and terms of s.
7 125.01, relating to counties, and s. 166.021, relating to
8 municipalities, are fully applicable to the entity. However,
9 neither the entity nor any of its members on behalf of the
10 entity may exercise the power of eminent domain over the
11 facilities or property of any existing water or wastewater
12 plant utility system, nor may the entity acquire title to any
13 water or wastewater plant utility facilities, other
14 facilities, or property which was acquired by the use of
15 eminent domain after the effective date of this act. Bonds,
16 notes, and other obligations issued by the entity are issued
17 on behalf of the public agencies that are members of the
18 entity.

19 8.2. Except as limited by the terms and conditions of
20 the utility acquisition agreement, as approved by the
21 applicable host government, any entity created under this
22 section may also issue bond anticipation notes in connection
23 with the authorization, issuance, and sale of bonds. The bonds
24 may be issued as serial bonds or as term bonds or both. Any
25 entity may issue capital appreciation bonds or variable rate
26 bonds. Any bonds, notes, or other obligations must be
27 authorized by resolution of the governing body of the entity
28 and bear the date or dates; mature at the time or times, not
29 exceeding 40 years from their respective dates; bear interest
30 at the rate or rates; be payable at the time or times; be in
31 the denomination; be in the form; carry the registration

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

1 authorize the issuance and sale of the bonds, notes, or other
2 obligations.

3 9.3. Bonds, notes, or other obligations issued under
4 this paragraph ~~subparagraph 1.~~ may be validated as provided in
5 chapter 75. The complaint in any action to validate the bonds,
6 notes, or other obligations must be filed only in the Circuit
7 Court for Leon County. The notice required to be published by
8 s. 75.06 must be published in Leon County and in each county
9 that is a member of the entity issuing the bonds, notes, or
10 other obligations, or in which a member of the entity is
11 located, and the complaint and order of the circuit court must
12 be served only on the State Attorney of the Second Judicial
13 Circuit and on the state attorney of each circuit in each
14 county that is a member of the entity issuing the bonds,
15 notes, or other obligations or in which a member of the entity
16 is located. Section 75.04(2) does not apply to a complaint for
17 validation brought by the legal entity.

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

1 thereof. The exemption granted in this subparagraph is not
2 applicable to any tax imposed by chapter 220 on interest,
3 income, or profits on debt obligations owned by corporations.

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

6 120.52 Definitions.--As used in this act:

7 (1) "Agency" means:

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

10 (b) Each:

11 1. State officer and state department, and each
12 departmental unit described in s. 20.04.

13 2. Authority, including a regional water supply
14 authority.

15 3. Board.

16 4. Commission, including the Commission on Ethics and
17 the Fish and Wildlife Conservation Commission when acting
18 pursuant to statutory authority derived from the Legislature.

19 5. Regional planning agency.

20 6. Multicounty special district with a majority of its
21 governing board comprised of nonelected persons.

22 7. Educational units.

23 8. Entity described in chapters 163, 373, 380, and 582
24 and s. 186.504.

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

29
30 This definition does not include any legal entity or agency
31 created in whole or in part pursuant to chapter 361, part II,

1 any metropolitan planning organization created pursuant to s.
2 339.175, any separate legal or administrative entity created
3 pursuant to s. 339.175 of which a metropolitan planning
4 organization is a member, an expressway authority pursuant to
5 chapter 348, any legal or administrative entity created by an
6 interlocal agreement pursuant to s. 163.01(7), except those
7 created pursuant to s. 163.01(7)(g)1., unless any party to
8 such agreement is otherwise an agency as defined in this
9 subsection, or any multicounty special district with a
10 majority of its governing board comprised of elected persons;
11 however, this definition shall include a regional water supply
12 authority.

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

15 367.021 Definitions.--As used in this chapter, the
16 following words or terms shall have the meanings indicated:

17 (7) "Governmental authority" means a political
18 subdivision, as defined by s. 1.01(8), a regional water supply
19 authority created pursuant to s. 373.1962, or a nonprofit
20 corporation formed for the purpose of acting on behalf of a
21 political subdivision with respect to a water or wastewater
22 facility; however, this definition shall exclude a separate
23 legal entity created pursuant to s. 163.01(7)(g)1.

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

26 367.071 Sale, assignment, or transfer of certificate
27 of authorization, facilities, or control.--

28 (1) A ~~No~~ utility may not ~~shall~~ sell, assign, or
29 transfer its certificate of authorization, facilities or any
30 portion thereof, or majority organizational control without
31 determination and approval of the commission that the proposed

1 sale, assignment, or transfer is in the public interest and
2 that the buyer, assignee, or transferee will fulfill the
3 commitments, obligations, and representations of the utility.
4 ~~However, a sale, assignment, or transfer of its certificate of~~
5 ~~authorization, facilities or any portion thereof, or majority~~
6 ~~organizational control may occur prior to commission approval~~
7 ~~if the contract for sale, assignment, or transfer is made~~
8 ~~contingent upon commission approval.~~

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

11 (a) The sale of facilities, in whole or part, to a
12 governmental authority, as defined in s. 367.021(7), shall be
13 approved as a matter of right; however, the governmental
14 authority shall, prior to taking any official action, obtain
15 from the utility or commission with respect to the facilities
16 to be sold the most recent available income and expense
17 statement, balance sheet, and statement of rate base for
18 regulatory purposes and contributions-in-aid-of-construction.
19 Any request for rate relief pending before the commission at
20 the time of sale is deemed to have been withdrawn. Interim
21 rates, if previously approved by the commission, must be
22 discontinued, and any money collected pursuant to interim rate
23 relief must be refunded to the customers of the utility with
24 interest.

25 (b) When paragraph (a) does not apply, the commission
26 shall amend the certificate of authorization as necessary to
27 reflect the change resulting from the sale, assignment, or
28 transfer.

29 Section 5. If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 invalidity does not affect other provisions or applications of

