

By Senator Aronberg

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A bill to be entitled

An act relating to interlocal cooperation agreements; amending s. 163.01, F.S.; removing a provision that exempts certain specified separate legal entities that manage public facilities from the jurisdiction of the Public Service Commission; providing an effective date.

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

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

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

(g)1. Notwithstanding any other provisions of this section, any separate legal entity created under this section, the membership of which is limited to municipalities and counties of the state, and which may include a special district in addition to a municipality or county or both, may acquire, own, construct, improve, operate, and manage public facilities, or finance facilities on behalf of any person, relating to a governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside of the members of the entity. ~~Notwithstanding s. 367.171(7), any separate legal entity created under this paragraph is not subject to Public Service Commission jurisdiction.~~ The separate legal entity may not provide utility services within the service area of an

1 existing utility system unless it has received the consent of
2 the utility.

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

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

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

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

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 shall notify the host government in writing by
27 certified mail about the contemplated acquisition not less
28 than 30 days before any proposed transfer of ownership, use,
29 or possession of any utility assets by such separate legal
30 entity. The potential acquisition notice shall be provided to
31 the legislative head of the governing body of the host

1 government and to its chief administrative officer and shall
2 provide the name and address of a contact person for the
3 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, or 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. A resolution adopted by the host
12 government which prohibits the acquisition may include
13 conditions that would make the proposal acceptable to the host
14 government.

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

30 5. After the acquisition or construction of any
31 utility systems by a separate legal entity created under this

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

14 6. This section is an alternative provision otherwise
15 provided by law as authorized in s. 4, Art. VIII of the State
16 Constitution for any transfer of power as a result of an
17 acquisition of a utility by a separate legal entity from a
18 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. The
24 entity has all the powers provided by the interlocal agreement
25 under which it is created or which are necessary to finance,
26 own, operate, or manage the public facility, including,
27 without limitation, the power to establish rates, charges, and
28 fees for products or services provided by it, the power to
29 levy special assessments, the power to sell or finance all or
30 a portion of such facility, and the power to contract with a
31 public or private entity to manage and operate such facilities

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

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

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

29 | 9. Bonds, notes, or other obligations issued under
30 | this paragraph may be validated as provided in chapter 75. The
31 | complaint in any action to validate the bonds, notes, or other

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

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

30 Section 2. This act shall take effect July 1, 2006.
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SENATE SUMMARY

Removes a provision that exempts certain specified
separate legal entities that manage public facilities
from the jurisdiction of the Public Service Commission.