

By Senator Richter

37-01082-09

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1 A bill to be entitled

2 An act relating to state oversight of utility services  
3 provided by intergovernmental authorities; amending s.  
4 163.01, F.S.; deleting a provision that exempts  
5 certain legal entities from the jurisdiction of the  
6 Public Service Commission; amending s. 288.0655, F.S.;  
7 conforming a cross-reference; amending s. 367.021,  
8 F.S.; defining "intergovernmental authority"; revising  
9 definitions; amending s. 367.022, F.S.; exempting  
10 certain water and wastewater systems from regulation  
11 by the commission; amending ss. 367.071 and 367.145,  
12 F.S.; exempting an intergovernmental authority from  
13 certain fees; amending s. 367.171, F.S.; deleting the  
14 exception of certain utility systems subject to  
15 interlocal utility agreements from the exclusive  
16 jurisdiction of the commission; amending s. 624.105,  
17 F.S.; conforming a cross-reference; providing an  
18 effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Paragraph (g) of subsection (7) of section  
23 163.01, Florida Statutes, is amended to read:

24 163.01 Florida Interlocal Cooperation Act of 1969.—

25 (7)

26 (g)1. Notwithstanding any other provisions of this section,  
27 any separate legal entity created under this section, the  
28 membership of which is limited to municipalities and counties of  
29 the state, and which may include a special district in addition

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30 to a municipality or county or both, may acquire, own,  
31 construct, improve, operate, and manage public facilities, or  
32 finance facilities on behalf of any person, relating to a  
33 governmental function or purpose, including, but not limited to,  
34 wastewater facilities, water or alternative water supply  
35 facilities, and water reuse facilities, which may serve  
36 populations within or outside of the members of the entity.

37 ~~Notwithstanding s. 367.171(7), any separate legal entity created~~  
38 ~~under this paragraph is not subject to Public Service Commission~~  
39 ~~jurisdiction.~~ The separate legal entity may not provide utility  
40 services within the service area of an existing utility system  
41 unless it has received the consent of the utility.

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

43 a. "Host government" means the governing body of the  
44 county, if the largest number of equivalent residential  
45 connections currently served by a system of the utility is  
46 located in the unincorporated area, or the governing body of a  
47 municipality, if the largest number of equivalent residential  
48 connections currently served by a system of the utility is  
49 located within that municipality's boundaries.

50 b. "Separate legal entity" means any entity created by  
51 interlocal agreement the membership of which is limited to two  
52 or more special districts, municipalities, or counties of the  
53 state, but which entity is legally separate and apart from any  
54 of its member governments.

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

57 d. "Utility" means a water or wastewater utility and  
58 includes every person, separate legal entity, lessee, trustee,

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59 or receiver owning, operating, managing, or controlling a  
60 system, or proposing construction of a system, who is providing,  
61 or proposes to provide, water or wastewater service to the  
62 public for compensation.

63 3. A separate legal entity that seeks to acquire any  
64 utility shall notify the host government in writing by certified  
65 mail about the contemplated acquisition not less than 30 days  
66 before any proposed transfer of ownership, use, or possession of  
67 any utility assets by such separate legal entity. The potential  
68 acquisition notice shall be provided to the legislative head of  
69 the governing body of the host government and to its chief  
70 administrative officer and shall provide the name and address of  
71 a contact person for the separate legal entity and information  
72 identified in s. 367.071(4)(a) concerning the contemplated  
73 acquisition.

74 4.a. Within 30 days following receipt of the notice, the  
75 host government may adopt a resolution to become a member of the  
76 separate legal entity, adopt a resolution to approve the utility  
77 acquisition, or adopt a resolution to prohibit the utility  
78 acquisition by the separate legal entity if the host government  
79 determines that the proposed acquisition is not in the public  
80 interest. A resolution adopted by the host government which  
81 prohibits the acquisition may include conditions that would make  
82 the proposal acceptable to the host government.

83 b. If a host government adopts a membership resolution, the  
84 separate legal entity shall accept the host government as a  
85 member on the same basis as its existing members before any  
86 transfer of ownership, use, or possession of the utility or the  
87 utility facilities. If a host government adopts a resolution to

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88 approve the utility acquisition, the separate legal entity may  
89 complete the acquisition. If a host government adopts a  
90 prohibition resolution, the separate legal entity may not  
91 acquire the utility within that host government's territory  
92 without the specific consent of the host government by future  
93 resolution. If a host government does not adopt a prohibition  
94 resolution or an approval resolution, the separate legal entity  
95 may proceed to acquire the utility after the 30-day notice  
96 period without further notice.

97       5. After the acquisition or construction of any utility  
98 systems by a separate legal entity created under this paragraph,  
99 revenues or any other income may not be transferred or paid to a  
100 member of a separate legal entity, or to any other special  
101 district, county, or municipality, from user fees or other  
102 charges or revenues generated from customers that are not  
103 physically located within the jurisdictional or service delivery  
104 boundaries of the member, special district, county, or  
105 municipality receiving the transfer or payment. Any transfer or  
106 payment to a member, special district, or other local government  
107 must be solely from user fees or other charges or revenues  
108 generated from customers that are physically located within the  
109 jurisdictional or service delivery boundaries of the member,  
110 special district, or local government receiving the transfer of  
111 payment.

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

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117           7. The entity may finance or refinance the acquisition,  
118 construction, expansion, and improvement of such facilities  
119 relating to a governmental function or purpose through the  
120 issuance of its bonds, notes, or other obligations under this  
121 section or as otherwise authorized by law. The entity has all  
122 the powers provided by the interlocal agreement under which it  
123 is created or which are necessary to finance, own, operate, or  
124 manage the public facility, including, without limitation, the  
125 power to establish rates, charges, and fees for products or  
126 services provided by it, the power to levy special assessments,  
127 the power to sell or finance all or a portion of such facility,  
128 and the power to contract with a public or private entity to  
129 manage and operate such facilities or to provide or receive  
130 facilities, services, or products. Except as may be limited by  
131 the interlocal agreement under which the entity is created, all  
132 of the privileges, benefits, powers, and terms of s. 125.01,  
133 relating to counties, and s. 166.021, relating to  
134 municipalities, are fully applicable to the entity. However,  
135 neither the entity nor any of its members on behalf of the  
136 entity may exercise the power of eminent domain over the  
137 facilities or property of any existing water or wastewater plant  
138 utility system, nor may the entity acquire title to any water or  
139 wastewater plant utility facilities, other facilities, or  
140 property which was acquired by the use of eminent domain after  
141 the effective date of this act. Bonds, notes, and other  
142 obligations issued by the entity are issued on behalf of the  
143 public agencies that are members of the entity.

144           8. Any entity created under this section may also issue  
145 bond anticipation notes in connection with the authorization,

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146 issuance, and sale of bonds. The bonds may be issued as serial  
147 bonds or as term bonds or both. Any entity may issue capital  
148 appreciation bonds or variable rate bonds. Any bonds, notes, or  
149 other obligations must be authorized by resolution of the  
150 governing body of the entity and bear the date or dates; mature  
151 at the time or times, not exceeding 40 years from their  
152 respective dates; bear interest at the rate or rates; be payable  
153 at the time or times; be in the denomination; be in the form;  
154 carry the registration privileges; be executed in the manner; be  
155 payable from the sources and in the medium or payment and at the  
156 place; and be subject to the terms of redemption, including  
157 redemption prior to maturity, as the resolution may provide. If  
158 any officer whose signature, or a facsimile of whose signature,  
159 appears on any bonds, notes, or other obligations ceases to be  
160 an officer before the delivery of the bonds, notes, or other  
161 obligations, the signature or facsimile is valid and sufficient  
162 for all purposes as if he or she had remained in office until  
163 the delivery. The bonds, notes, or other obligations may be sold  
164 at public or private sale for such price as the governing body  
165 of the entity shall determine. Pending preparation of the  
166 definitive bonds, the entity may issue interim certificates,  
167 which shall be exchanged for the definitive bonds. The bonds may  
168 be secured by a form of credit enhancement, if any, as the  
169 entity deems appropriate. The bonds may be secured by an  
170 indenture of trust or trust agreement. In addition, the  
171 governing body of the legal entity may delegate, to an officer,  
172 official, or agent of the legal entity as the governing body of  
173 the legal entity may select, the power to determine the time;  
174 manner of sale, public or private; maturities; rate of interest,

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175 which may be fixed or may vary at the time and in accordance  
176 with a specified formula or method of determination; and other  
177 terms and conditions as may be deemed appropriate by the  
178 officer, official, or agent so designated by the governing body  
179 of the legal entity. However, the amount and maturity of the  
180 bonds, notes, or other obligations and the interest rate of the  
181 bonds, notes, or other obligations must be within the limits  
182 prescribed by the governing body of the legal entity and its  
183 resolution delegating to an officer, official, or agent the  
184 power to authorize the issuance and sale of the bonds, notes, or  
185 other obligations.

186 9. Bonds, notes, or other obligations issued under this  
187 paragraph may be validated as provided in chapter 75. The  
188 complaint in any action to validate the bonds, notes, or other  
189 obligations must be filed only in the Circuit Court for Leon  
190 County. The notice required to be published by s. 75.06 must be  
191 published in Leon County and in each county that is a member of  
192 the entity issuing the bonds, notes, or other obligations, or in  
193 which a member of the entity is located, and the complaint and  
194 order of the circuit court must be served only on the State  
195 Attorney of the Second Judicial Circuit and on the state  
196 attorney of each circuit in each county that is a member of the  
197 entity issuing the bonds, notes, or other obligations or in  
198 which a member of the entity is located. Section 75.04(2) does  
199 not apply to a complaint for validation brought by the legal  
200 entity.

201 10. The accomplishment of the authorized purposes of a  
202 legal entity created under this paragraph is in all respects for  
203 the benefit of the people of the state, for the increase of

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204 their commerce and prosperity, and for the improvement of their  
205 health and living conditions. Since the legal entity will  
206 perform essential governmental functions in accomplishing its  
207 purposes, the legal entity is not required to pay any taxes or  
208 assessments of any kind whatsoever upon any property acquired or  
209 used by it for such purposes or upon any revenues at any time  
210 received by it. The bonds, notes, and other obligations of an  
211 entity, their transfer, and the income therefrom, including any  
212 profits made on the sale thereof, are at all times free from  
213 taxation of any kind by the state or by any political  
214 subdivision or other agency or instrumentality thereof. The  
215 exemption granted in this subparagraph is not applicable to any  
216 tax imposed by chapter 220 on interest, income, or profits on  
217 debt obligations owned by corporations.

218 Section 2. Paragraph (b) of subsection (2) of section  
219 288.0655, Florida Statutes, is amended to read:

220 288.0655 Rural Infrastructure Fund.—

221 (2)

222 (b) To facilitate access of rural communities and rural  
223 areas of critical economic concern as defined by the Rural  
224 Economic Development Initiative to infrastructure funding  
225 programs of the Federal Government, such as those offered by the  
226 United States Department of Agriculture and the United States  
227 Department of Commerce, and state programs, including those  
228 offered by Rural Economic Development Initiative agencies, and  
229 to facilitate local government or private infrastructure funding  
230 efforts, the office may award grants for up to 30 percent of the  
231 total infrastructure project cost. Eligible projects must be  
232 related to specific job-creation or job-retention opportunities.



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233 Eligible projects may also include improving any inadequate  
234 infrastructure that has resulted in regulatory action that  
235 prohibits economic or community growth or reducing the costs to  
236 community users of proposed infrastructure improvements that  
237 exceed such costs in comparable communities. Eligible uses of  
238 funds shall include improvements to public infrastructure for  
239 industrial or commercial sites and upgrades to or development of  
240 public tourism infrastructure. Authorized infrastructure may  
241 include the following public or public-private partnership  
242 facilities: storm water systems; telecommunications facilities;  
243 roads or other remedies to transportation impediments; nature-  
244 based tourism facilities; or other physical requirements  
245 necessary to facilitate tourism, trade, and economic development  
246 activities in the community. Authorized infrastructure may also  
247 include publicly owned self-powered nature-based tourism  
248 facilities and additions to the distribution facilities of the  
249 existing natural gas utility as defined in s. 366.04(3)(c), the  
250 existing electric utility as defined in s. 366.02, or the  
251 existing water or wastewater utility as defined in s.

252 367.021(13) ~~s. 367.021(12)~~, or any other existing water or  
253 wastewater facility, which owns a gas or electric distribution  
254 system or a water or wastewater system in this state where:

255 1. A contribution-in-aid of construction is required to  
256 serve public or public-private partnership facilities under the  
257 tariffs of any natural gas, electric, water, or wastewater  
258 utility as defined herein; and

259 2. Such utilities as defined herein are willing and able to  
260 provide such service.

261 Section 3. Subsections (7) and (12) of section 367.021,

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262 Florida Statutes, are amended, subsections (9) through (13) of  
 263 that section are renumbered as subsections (10) through (14),  
 264 respectively, and a new subsection (9) is added to that section,  
 265 to read:

266 367.021 Definitions.—As used in this chapter, the following  
 267 words or terms shall have the meanings indicated:

268 (7) "Governmental authority" means a political subdivision,  
 269 as defined by s. 1.01(8), a regional water supply authority  
 270 created pursuant to s. 373.1962, or a nonprofit corporation  
 271 formed for the purpose of acting on behalf of a political  
 272 subdivision with respect to a water or wastewater facility. The  
 273 term does not include an intergovernmental authority.

274 (9) "Intergovernmental authority" means a separate legal  
 275 entity created by interlocal agreement under s. 163.01(7)(g).

276 (13)~~(12)~~ "Utility" means a water or wastewater utility and,  
 277 except as provided in s. 367.022, the term includes every  
 278 person, lessee, trustee, ~~or~~ receiver, or intergovernmental  
 279 authority owning, operating, managing, or controlling a system,  
 280 or proposing construction of a system, who is providing, or  
 281 proposes to provide, water or wastewater service to the public  
 282 for compensation.

283 Section 4. Subsection (13) is added to section 367.022,  
 284 Florida Statutes, to read:

285 367.022 Exemptions.—The following are not subject to  
 286 regulation by the commission as a utility nor are they subject  
 287 to the provisions of this chapter, except as expressly provided:

288 (13) A system owned, operated, managed, or controlled by an  
 289 intergovernmental authority within the first 48 months after the  
 290 authority obtains ownership, operation, management, or control

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291 of the system.

292 Section 5. Subsection (3) of section 367.071, Florida  
293 Statutes, is amended to read:

294 367.071 Sale, assignment, or transfer of certificate of  
295 authorization, facilities, or control.—

296 (3) An application for proposed sale, assignment, or  
297 transfer shall be accompanied by a fee as provided by s.  
298 367.145. A ~~No~~ fee is not required to be paid by a governmental  
299 authority or intergovernmental authority that is the buyer,  
300 assignee, or transferee.

301 Section 6. Paragraph (a) of subsection (1) of section  
302 367.145, Florida Statutes, is amended to read:

303 367.145 Regulatory assessment and application fees.—

304 (1) The commission shall set by rule a regulatory  
305 assessment fee that each utility must pay in accordance with s.  
306 350.113(3); however, each small utility with annual revenues of  
307 less than \$200,000 shall pay once a year in conjunction with  
308 filing its annual financial report required by commission rule.  
309 Notwithstanding any provision of law to the contrary, the amount  
310 of the regulatory assessment fee shall not exceed 4.5 percent of  
311 the gross revenues of the utility derived from intrastate  
312 business, excluding sales for resale made to a regulated  
313 company.

314 (a) A governmental authority or intergovernmental authority  
315 to which ownership or control of a utility is transferred is not  
316 liable for any fees owed the commission by the utility as of the  
317 date of transfer. However, whenever a purchase at wholesale is  
318 made of any water or wastewater service and a fee is paid or  
319 payable thereon by the selling utility and the utility

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320 purchasing such water or wastewater service resells the same  
321 directly to customers, the purchasing utility is entitled to,  
322 and must receive, credit on such fees as may be due by it under  
323 this section to the extent of the fee paid or payable upon such  
324 water or wastewater service by the utility from which such  
325 purchase was made. All such fee payments and penalties must be  
326 deposited in accordance with s. 350.113.

327 Section 7. Subsection (7) of section 367.171, Florida  
328 Statutes, is amended to read:

329 367.171 Effectiveness of this chapter.—

330 (7) Notwithstanding any provision of ~~anything in this~~  
331 section to the contrary, the commission has ~~shall have~~ exclusive  
332 jurisdiction over a all utility system ~~systems~~ whose service  
333 transverses county boundaries, whether the counties involved are  
334 jurisdictional or nonjurisdictional, ~~except for utility systems~~  
335 ~~that are subject to, and remain subject to, interlocal utility~~  
336 ~~agreements in effect as of January 1, 1991, that create a single~~  
337 ~~governmental authority to regulate the utility systems whose~~  
338 ~~service transverses county boundaries, provided that no such~~  
339 ~~interlocal agreement shall divest commission jurisdiction over~~  
340 ~~such systems, any portion of which provides service within a~~  
341 ~~county that is subject to commission jurisdiction under this~~  
342 ~~section.~~

343 Section 8. Section 624.105, Florida Statutes, is amended to  
344 read:

345 624.105 Waiver of customer liability.—Any regulated company  
346 as defined in s. 350.111, any electric utility as defined in s.  
347 366.02(2), any utility as defined in s. 367.021(13) ~~s.~~  
348 ~~367.021(12)~~ or s. 367.022(2) and (7), and any provider of

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349 communications services as defined in s. 202.11(2) may charge  
350 for and include an optional waiver of liability provision in  
351 their customer contracts under which the entity agrees to waive  
352 all or a portion of the customer's liability for service from  
353 the entity for a defined period in the event of the customer's  
354 call to active military service, death, disability, involuntary  
355 unemployment, qualification for family leave, or similar  
356 qualifying event or condition. Such provisions may not be  
357 effective in the customer's contract with the entity unless  
358 affirmatively elected by the customer. No such provision shall  
359 constitute insurance so long as the provision is a contract  
360 between the entity and its customer.

361 Section 9. This act shall take effect July 1, 2009.