

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

18
 19 Be It Enacted by the Legislature of the State of Florida:

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 21 Section 1. Paragraph (g) of subsection (7) of section
 22 163.01, Florida Statutes, is amended to read:
 23 163.01 Florida Interlocal Cooperation Act of 1969.--
 24 (7)
 25 (g)1. Notwithstanding any other provisions of this
 26 section, any separate legal entity created under this section,
 27 the membership of which is limited to municipalities and
 28 counties of the state, and which may include a special district

29 | in addition to a municipality or county or both, may acquire,
 30 | own, construct, improve, operate, and manage public facilities,
 31 | or finance facilities on behalf of any person, relating to a
 32 | governmental function or purpose, including, but not limited to,
 33 | wastewater facilities, water or alternative water supply
 34 | facilities, and water reuse facilities, which may serve
 35 | populations within or outside of the members of the entity.
 36 | ~~Notwithstanding s. 367.171(7), any separate legal entity created~~
 37 | ~~under this paragraph is not subject to Public Service Commission~~
 38 | ~~jurisdiction.~~ The separate legal entity may not provide utility
 39 | services within the service area of an existing utility system
 40 | unless it has received the consent of the utility.

41 | 2. For purposes of this paragraph, the term:

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

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

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

56 d. "Utility" means a water or wastewater utility and
57 includes every person, separate legal entity, lessee, trustee,
58 or receiver owning, operating, managing, or controlling a
59 system, or proposing construction of a system, who is providing,
60 or proposes to provide, water or wastewater service to the
61 public for compensation.

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

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

82 b. If a host government adopts a membership resolution,
83 the separate legal entity shall accept the host government as a

84 member on the same basis as its existing members before any
85 transfer of ownership, use, or possession of the utility or the
86 utility facilities. If a host government adopts a resolution to
87 approve the utility acquisition, the separate legal entity may
88 complete the acquisition. If a host government adopts a
89 prohibition resolution, the separate legal entity may not
90 acquire the utility within that host government's territory
91 without the specific consent of the host government by future
92 resolution. If a host government does not adopt a prohibition
93 resolution or an approval resolution, the separate legal entity
94 may proceed to acquire the utility after the 30-day notice
95 period without further notice.

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

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

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

139 | property which was acquired by the use of eminent domain after
140 | the effective date of this act. Bonds, notes, and other
141 | obligations issued by the entity are issued on behalf of the
142 | public agencies that are members of the entity.

143 | 8. Any entity created under this section may also issue
144 | bond anticipation notes in connection with the authorization,
145 | issuance, and sale of bonds. The bonds may be issued as serial
146 | bonds or as term bonds or both. Any entity may issue capital
147 | appreciation bonds or variable rate bonds. Any bonds, notes, or
148 | other obligations must be authorized by resolution of the
149 | governing body of the entity and bear the date or dates; mature
150 | at the time or times, not exceeding 40 years from their
151 | respective dates; bear interest at the rate or rates; be payable
152 | at the time or times; be in the denomination; be in the form;
153 | carry the registration privileges; be executed in the manner; be
154 | payable from the sources and in the medium or payment and at the
155 | place; and be subject to the terms of redemption, including
156 | redemption prior to maturity, as the resolution may provide. If
157 | any officer whose signature, or a facsimile of whose signature,
158 | appears on any bonds, notes, or other obligations ceases to be
159 | an officer before the delivery of the bonds, notes, or other
160 | obligations, the signature or facsimile is valid and sufficient
161 | for all purposes as if he or she had remained in office until
162 | the delivery. The bonds, notes, or other obligations may be sold
163 | at public or private sale for such price as the governing body
164 | of the entity shall determine. Pending preparation of the
165 | definitive bonds, the entity may issue interim certificates,
166 | which shall be exchanged for the definitive bonds. The bonds may

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167 be secured by a form of credit enhancement, if any, as the
168 entity deems appropriate. The bonds may be secured by an
169 indenture of trust or trust agreement. In addition, the
170 governing body of the legal entity may delegate, to an officer,
171 official, or agent of the legal entity as the governing body of
172 the legal entity may select, the power to determine the time;
173 manner of sale, public or private; maturities; rate of interest,
174 which may be fixed or may vary at the time and in accordance
175 with a specified formula or method of determination; and other
176 terms and conditions as may be deemed appropriate by the
177 officer, official, or agent so designated by the governing body
178 of the legal entity. However, the amount and maturity of the
179 bonds, notes, or other obligations and the interest rate of the
180 bonds, notes, or other obligations must be within the limits
181 prescribed by the governing body of the legal entity and its
182 resolution delegating to an officer, official, or agent the
183 power to authorize the issuance and sale of the bonds, notes, or
184 other obligations.

185 9. Bonds, notes, or other obligations issued under this
186 paragraph may be validated as provided in chapter 75. The
187 complaint in any action to validate the bonds, notes, or other
188 obligations must be filed only in the Circuit Court for Leon
189 County. The notice required to be published by s. 75.06 must be
190 published in Leon County and in each county that is a member of
191 the entity issuing the bonds, notes, or other obligations, or in
192 which a member of the entity is located, and the complaint and
193 order of the circuit court must be served only on the State
194 Attorney of the Second Judicial Circuit and on the state

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195 attorney of each circuit in each county that is a member of the
196 entity issuing the bonds, notes, or other obligations or in
197 which a member of the entity is located. Section 75.04(2) does
198 not apply to a complaint for validation brought by the legal
199 entity.

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

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

219 288.0655 Rural Infrastructure Fund.--

220 (2)

221 (b) To facilitate access of rural communities and rural
222 areas of critical economic concern as defined by the Rural

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223 Economic Development Initiative to infrastructure funding
224 programs of the Federal Government, such as those offered by the
225 United States Department of Agriculture and the United States
226 Department of Commerce, and state programs, including those
227 offered by Rural Economic Development Initiative agencies, and
228 to facilitate local government or private infrastructure funding
229 efforts, the office may award grants for up to 30 percent of the
230 total infrastructure project cost. Eligible projects must be
231 related to specific job-creation or job-retention opportunities.
232 Eligible projects may also include improving any inadequate
233 infrastructure that has resulted in regulatory action that
234 prohibits economic or community growth or reducing the costs to
235 community users of proposed infrastructure improvements that
236 exceed such costs in comparable communities. Eligible uses of
237 funds shall include improvements to public infrastructure for
238 industrial or commercial sites and upgrades to or development of
239 public tourism infrastructure. Authorized infrastructure may
240 include the following public or public-private partnership
241 facilities: storm water systems; telecommunications facilities;
242 roads or other remedies to transportation impediments; nature-
243 based tourism facilities; or other physical requirements
244 necessary to facilitate tourism, trade, and economic development
245 activities in the community. Authorized infrastructure may also
246 include publicly owned self-powered nature-based tourism
247 facilities and additions to the distribution facilities of the
248 existing natural gas utility as defined in s. 366.04(3)(c), the
249 existing electric utility as defined in s. 366.02, or the
250 existing water or wastewater utility as defined in s.

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251 367.021 (13) ~~(12)~~, or any other existing water or wastewater
 252 facility, which owns a gas or electric distribution system or a
 253 water or wastewater system in this state where:

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

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

260 Section 3. Subsections (7) and (12) of section 367.021,
 261 Florida Statutes, are amended, subsections (9) through (13) of
 262 that section are renumbered as subsections (10) through (14),
 263 respectively, and a new subsection (9) is added to that section,
 264 to read:

265 367.021 Definitions.--As used in this chapter, the
 266 following words or terms shall have the meanings indicated:

267 (7) "Governmental authority" means a political
 268 subdivision, as defined by s. 1.01(8), a regional water supply
 269 authority created pursuant to s. 373.1962, or a nonprofit
 270 corporation formed for the purpose of acting on behalf of a
 271 political subdivision with respect to a water or wastewater
 272 facility. The term does not include an intergovernmental
 273 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
 277 and, 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
 289 an intergovernmental authority within the first 48 months after
 290 the authority obtains ownership, operation, management, or
 291 control 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 fee~~ A 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
 315 authority to which ownership or control of a utility is
 316 transferred is not liable for any fees owed the commission by
 317 the utility as of the date of transfer. However, whenever a
 318 purchase at wholesale is made of any water or wastewater service
 319 and a fee is paid or payable thereon by the selling utility and
 320 the utility purchasing such water or wastewater service resells
 321 the same directly to customers, the purchasing utility is
 322 entitled to, and must receive, credit on such fees as may be due
 323 by it under this section to the extent of the fee paid or
 324 payable upon such water or wastewater service by the utility
 325 from which such purchase was made. All such fee payments and
 326 penalties must be 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~~

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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
344 to read:

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