

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:

20  
 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.

CS/HB 691

2009

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

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

CS/HB 691

2009

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



CS/HB 691

2009

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.

CS/HB 691

2009

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 that provides retail water or wastewater service to  
 274 the public.

275 (9) "Intergovernmental authority" means a separate legal  
 276 entity created by interlocal agreement under s. 163.01(7)(g)  
 277 that provides retail water or wastewater service to the public.

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

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

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

290        (13) A system owned, operated, managed, or controlled by  
 291 an intergovernmental authority within the first 48 months after  
 292 the authority obtains ownership, operation, management, or  
 293 control of the system.

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

296        367.071 Sale, assignment, or transfer of certificate of  
 297 authorization, facilities, or control.--

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

303        Section 6. Paragraph (a) of subsection (1) of section  
 304 367.145, Florida Statutes, is amended to read:

305        367.145 Regulatory assessment and application fees.--

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

316 (a) A governmental authority or intergovernmental  
 317 authority to which ownership or control of a utility is  
 318 transferred is not liable for any fees owed the commission by  
 319 the utility as of the date of transfer. However, whenever a  
 320 purchase at wholesale is made of any water or wastewater service  
 321 and a fee is paid or payable thereon by the selling utility and  
 322 the utility purchasing such water or wastewater service resells  
 323 the same directly to customers, the purchasing utility is  
 324 entitled to, and must receive, credit on such fees as may be due  
 325 by it under this section to the extent of the fee paid or  
 326 payable upon such water or wastewater service by the utility  
 327 from which such purchase was made. All such fee payments and  
 328 penalties must be deposited in accordance with s. 350.113.

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

331 367.171 Effectiveness of this chapter.--

332 (7) Notwithstanding any provision of ~~anything in~~ this  
 333 section to the contrary, the commission shall have exclusive

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

345 Section 8. Section 624.105, Florida Statutes, is amended  
 346 to read:

347 624.105 Waiver of customer liability.--Any regulated  
 348 company as defined in s. 350.111, any electric utility as  
 349 defined in s. 366.02(2), any utility as defined in s.  
 350 367.021(13)~~(12)~~ or s. 367.022(2) and (7), and any provider of  
 351 communications services as defined in s. 202.11(2) may charge  
 352 for and include an optional waiver of liability provision in  
 353 their customer contracts under which the entity agrees to waive  
 354 all or a portion of the customer's liability for service from  
 355 the entity for a defined period in the event of the customer's  
 356 call to active military service, death, disability, involuntary  
 357 unemployment, qualification for family leave, or similar  
 358 qualifying event or condition. Such provisions may not be  
 359 effective in the customer's contract with the entity unless  
 360 affirmatively elected by the customer. No such provision shall

CS/HB 691

2009

361 | constitute insurance so long as the provision is a contract  
362 | between the entity and its customer.

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