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LEGISLATIVE ACTION

Senate

.

House

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Floor: 2/AD/2R

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04/16/2013 12:05 PM

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Senator Latvala moved the following:

Senate Amendment (with directory and title amendments)

Between lines 23 and 24

insert:

(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 or a public agency of this state 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,



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14 including, but not limited to, wastewater facilities, water or
15 alternative water supply facilities, and water reuse facilities,
16 which may serve populations within or outside of the members of
17 the entity. Notwithstanding s. 367.171(7), any separate legal
18 entity created under this paragraph is not subject to Public
19 Service Commission jurisdiction. The separate legal entity may
20 not provide utility services within the service area of an
21 existing utility system unless it has received the consent of
22 the utility.

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

24 a. "Host government" means the governing body of the
25 county, if the largest number of equivalent residential
26 connections currently served by a system of the utility is
27 located in the unincorporated area, or the governing body of a
28 municipality, if the largest number of equivalent residential
29 connections currently served by a system of the utility is
30 located within that municipality's boundaries.

31 b. "Separate legal entity" means any entity created by
32 interlocal agreement the membership of which is limited to two
33 or more special districts, municipalities, ~~or~~ or
34 public agencies of the state, but which entity is legally
35 separate and apart from any of its member governments.

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

38 d. "Utility" means a water or wastewater utility and
39 includes every person, separate legal entity, lessee, trustee,
40 or receiver owning, operating, managing, or controlling a
41 system, or proposing construction of a system, who is providing,
42 or proposes to provide, water or wastewater service to the



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43 public for compensation.

44 3. A separate legal entity that seeks to acquire any
45 utility shall notify the host government in writing by certified
46 mail about the contemplated acquisition not less than 30 days
47 before any proposed transfer of ownership, use, or possession of
48 any utility assets by such separate legal entity. The potential
49 acquisition notice shall be provided to the legislative head of
50 the governing body of the host government and to its chief
51 administrative officer and shall provide the name and address of
52 a contact person for the separate legal entity and information
53 identified in s. 367.071(4)(a) concerning the contemplated
54 acquisition.

55 4.a. Within 30 days following receipt of the notice, the
56 host government may adopt a resolution to become a member of the
57 separate legal entity, adopt a resolution to approve the utility
58 acquisition, or adopt a resolution to prohibit the utility
59 acquisition by the separate legal entity if the host government
60 determines that the proposed acquisition is not in the public
61 interest. A resolution adopted by the host government which
62 prohibits the acquisition may include conditions that would make
63 the proposal acceptable to the host government.

64 b. If a host government adopts a membership resolution, the
65 separate legal entity shall accept the host government as a
66 member on the same basis as its existing members before any
67 transfer of ownership, use, or possession of the utility or the
68 utility facilities. If a host government adopts a resolution to
69 approve the utility acquisition, the separate legal entity may
70 complete the acquisition. If a host government adopts a
71 prohibition resolution, the separate legal entity may not



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72 acquire the utility within that host government's territory
73 without the specific consent of the host government by future
74 resolution. If a host government does not adopt a prohibition
75 resolution or an approval resolution, the separate legal entity
76 may proceed to acquire the utility after the 30-day notice
77 period without further notice.

78 5. After the acquisition or construction of any utility
79 systems by a separate legal entity created under this paragraph,
80 revenues or any other income may not be transferred or paid to a
81 member of a separate legal entity, or to any other special
82 district, county, ~~or~~ municipality, or public agency of this
83 state, from user fees or other charges or revenues generated
84 from customers that are not physically located within the
85 jurisdictional or service delivery boundaries of the member,
86 special district, county, ~~or~~ municipality, or public agency
87 receiving the transfer or payment. Any transfer or payment to a
88 member, special district, ~~or other~~ local government, or public
89 agency of this state must be solely from user fees or other
90 charges or revenues generated from customers that are physically
91 located within the jurisdictional or service delivery boundaries
92 of the member, special district, ~~or~~ local government, or public
93 agency receiving the transfer of payment.

94 6. This section is an alternative provision otherwise
95 provided by law as authorized in s. 4, Art. VIII of the State
96 Constitution for any transfer of power as a result of an
97 acquisition of a utility by a separate legal entity from a
98 municipality, county, ~~or~~ special district, or public agency of
99 this state.

100 7. The entity may finance or refinance the acquisition,



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101 construction, expansion, and improvement of such facilities
102 relating to a governmental function or purpose through the
103 issuance of its bonds, notes, or other obligations under this
104 section or as otherwise authorized by law. The entity has all
105 the powers provided by the interlocal agreement under which it
106 is created or which are necessary to finance, own, operate, or
107 manage the public facility, including, without limitation, the
108 power to establish rates, charges, and fees for products or
109 services provided by it, the power to levy special assessments,
110 the power to sell or finance all or a portion of such facility,
111 and the power to contract with a public or private entity to
112 manage and operate such facilities or to provide or receive
113 facilities, services, or products. Except as may be limited by
114 the interlocal agreement under which the entity is created, all
115 of the privileges, benefits, powers, and terms of s. 125.01,
116 relating to counties, and s. 166.021, relating to
117 municipalities, are fully applicable to the entity. However,
118 neither the entity nor any of its members on behalf of the
119 entity may exercise the power of eminent domain over the
120 facilities or property of any existing water or wastewater plant
121 utility system, nor may the entity acquire title to any water or
122 wastewater plant utility facilities, other facilities, or
123 property which was acquired by the use of eminent domain after
124 the effective date of this act. Bonds, notes, and other
125 obligations issued by the entity are issued on behalf of the
126 public agencies that are members of the entity.

127 8. Any entity created under this section may also issue
128 bond anticipation notes in connection with the authorization,
129 issuance, and sale of bonds. The bonds may be issued as serial



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130 bonds or as term bonds or both. Any entity may issue capital
131 appreciation bonds or variable rate bonds. Any bonds, notes, or
132 other obligations must be authorized by resolution of the
133 governing body of the entity and bear the date or dates; mature
134 at the time or times, not exceeding 40 years from their
135 respective dates; bear interest at the rate or rates; be payable
136 at the time or times; be in the denomination; be in the form;
137 carry the registration privileges; be executed in the manner; be
138 payable from the sources and in the medium or payment and at the
139 place; and be subject to the terms of redemption, including
140 redemption prior to maturity, as the resolution may provide. If
141 any officer whose signature, or a facsimile of whose signature,
142 appears on any bonds, notes, or other obligations ceases to be
143 an officer before the delivery of the bonds, notes, or other
144 obligations, the signature or facsimile is valid and sufficient
145 for all purposes as if he or she had remained in office until
146 the delivery. The bonds, notes, or other obligations may be sold
147 at public or private sale for such price as the governing body
148 of the entity shall determine. Pending preparation of the
149 definitive bonds, the entity may issue interim certificates,
150 which shall be exchanged for the definitive bonds. The bonds may
151 be secured by a form of credit enhancement, if any, as the
152 entity deems appropriate. The bonds may be secured by an
153 indenture of trust or trust agreement. In addition, the
154 governing body of the legal entity may delegate, to an officer,
155 official, or agent of the legal entity as the governing body of
156 the legal entity may select, the power to determine the time;
157 manner of sale, public or private; maturities; rate of interest,
158 which may be fixed or may vary at the time and in accordance



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159 with a specified formula or method of determination; and other
160 terms and conditions as may be deemed appropriate by the
161 officer, official, or agent so designated by the governing body
162 of the legal entity. However, the amount and maturity of the
163 bonds, notes, or other obligations and the interest rate of the
164 bonds, notes, or other obligations must be within the limits
165 prescribed by the governing body of the legal entity and its
166 resolution delegating to an officer, official, or agent the
167 power to authorize the issuance and sale of the bonds, notes, or
168 other obligations.

169 9. Bonds, notes, or other obligations issued under this
170 paragraph may be validated as provided in chapter 75. The
171 complaint in any action to validate the bonds, notes, or other
172 obligations must be filed only in the Circuit Court for Leon
173 County. The notice required to be published by s. 75.06 must be
174 published in Leon County and in each county that is a member of
175 the entity issuing the bonds, notes, or other obligations, or in
176 which a member of the entity is located, and the complaint and
177 order of the circuit court must be served only on the State
178 Attorney of the Second Judicial Circuit and on the state
179 attorney of each circuit in each county that is a member of the
180 entity issuing the bonds, notes, or other obligations or in
181 which a member of the entity is located. Section 75.04(2) does
182 not apply to a complaint for validation brought by the legal
183 entity.

184 10. The accomplishment of the authorized purposes of a
185 legal entity created under this paragraph is in all respects for
186 the benefit of the people of the state, for the increase of
187 their commerce and prosperity, and for the improvement of their



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188 health and living conditions. Since the legal entity will
189 perform essential governmental functions in accomplishing its
190 purposes, the legal entity is not required to pay any taxes or
191 assessments of any kind whatsoever upon any property acquired or
192 used by it for such purposes or upon any revenues at any time
193 received by it. The bonds, notes, and other obligations of an
194 entity, their transfer, and the income therefrom, including any
195 profits made on the sale thereof, are at all times free from
196 taxation of any kind by the state or by any political
197 subdivision or other agency or instrumentality thereof. The
198 exemption granted in this subparagraph is not applicable to any
199 tax imposed by chapter 220 on interest, income, or profits on
200 debt obligations owned by corporations.

201
202 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

203 And the directory clause is amended as follows:

204 Delete lines 9 - 10

205 and insert:

206 Section 1. Paragraph (b) of subsection (3) and paragraph
207 (g) of subsection (7) of section 163.01, Florida Statutes, are
208 amended to read:

209
210 ===== T I T L E A M E N D M E N T =====

211 And the title is amended as follows:

212 Between lines 4 and 5

213 insert:

214 providing that a public agency of this state may have
215 membership in a separate legal entity created under
216 the Florida Interlocal Cooperation Act of 1969;