

By Senator Latvala

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1 A bill to be entitled
2 An act relating to water and wastewater utilities;
3 providing a short title; amending s. 153.03, F.S.;
4 prohibiting a county from providing water or sewer
5 services to an unincorporated area if a municipality
6 is authorized to provide such services to the
7 unincorporated area pursuant to a franchise agreement
8 with a county or by a county resolution or ordinance;
9 authorizing a county to provide water and sewer
10 services upon expiration of an agreement under certain
11 circumstances; authorizing a county to provide water
12 and sewer services in certain circumstances when the
13 agreement does not contain an expiration date;
14 amending s. 180.02, F.S.; specifying that the
15 corporate powers of a municipality do not apply to the
16 unincorporated areas of a county without the county's
17 express consent; amending s. 180.191, F.S.; limiting
18 the amount of water and sewer utility rates, fees, and
19 charges that a municipality may impose on consumers
20 outside of the municipality's boundaries; requiring
21 billing disclosure of surcharges imposed on consumers
22 outside of the municipality's borders; authorizing
23 ratepayers in unincorporated areas to petition the
24 Florida Public Service Commission or county for a
25 determination of whether rates, fees, and charges
26 imposed by a municipality are just and equitable;
27 amending s. 367.022, F.S.; providing that a
28 municipality providing certain services in
29 unincorporated areas is subject to the regulation of

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30 the commission; amending s. 367.071, F.S.; requiring
 31 and establishing conditions for commission approval
 32 before a municipality may purchase certain water or
 33 wastewater facilities; providing an effective date.
 34

35 Be It Enacted by the Legislature of the State of Florida:
 36

37 Section 1. This act may be cited as the "Ratepayer
 38 Representation Act."

39 Section 2. Section 153.03, Florida Statutes, is amended to
 40 read:

41 153.03 General grant of power.—A county may ~~Any of the~~
 42 ~~several counties of the state which may hereafter come under the~~
 43 ~~provisions of this chapter as hereinafter provided is hereby~~
 44 ~~authorized and empowered:~~

45 (1) ~~To~~ Purchase or ~~and/or~~ construct and ~~to~~ improve, extend,
 46 enlarge, or ~~and~~ reconstruct a water supply system ~~or systems~~ or
 47 sewage disposal system ~~or systems, or both,~~ within a ~~such~~ county
 48 and any adjoining ~~county or counties;~~ and to purchase and/or
 49 ~~construct or reconstruct water system improvements or sewer~~
 50 ~~improvements, or both, within such county and any adjoining~~
 51 ~~county or counties and to operate, manage, and control those all~~
 52 ~~such systems so purchased and/or constructed~~ and all properties
 53 pertaining thereto; and to furnish and supply water and sewage
 54 collection and disposal services to a county, municipality, or
 55 ~~any of such counties and to any municipalities and any persons,~~
 56 firms, or corporations, public or private, in a county. ~~any of~~
 57 ~~such counties; provided,~~ However, ~~that~~ none of the facilities
 58 described in ~~provided by~~ this chapter may be constructed, owned,

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59 operated, or maintained by the county on property located within
60 the corporate limits of a any municipality without the consent
61 of the governing council, commission or body having general
62 legislative authority in the government of such municipality
63 unless the such facilities were owned by the county before the
64 on such property prior to the time such property was included
65 within the corporate limits of the such municipality.

66 (a) If a municipality, pursuant to a franchise agreement
67 with a county or by a county resolution or ordinance, is
68 authorized to provide water and sewage collection and disposal
69 services in an unincorporated area of the county, the No county
70 may not shall furnish any of the facilities described in
71 provided by this chapter to that unincorporated area any
72 property already being furnished like facilities by any
73 municipality without the express consent of the governing
74 council, commission or body having general legislative authority
75 in the government of the such municipality until the franchise
76 agreement, resolution, or ordinance has expired or is no longer
77 in effect. If the county thereafter elects to provide water
78 service or sewage collection and disposal services to the
79 unincorporated area, the county must compensate the municipality
80 for the fair market value of the facilities owned by the
81 municipality that are transferred to the county to serve the
82 unincorporated area.

83 (b) If the franchise agreement, resolution, or ordinance
84 does not contain an expiration term or date, the county may
85 provide water service or sewage collection and disposal services
86 to the unincorporated area of the county served by the
87 municipality subject to the following requirements:

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88 1. A majority of the ratepayers in the unincorporated area,
89 by vote in a referendum or written response to a mail survey,
90 have agreed to be served by the county; and

91 2. The county compensates the municipality for the fair
92 market value of the facilities owned by the municipality to
93 serve the unincorporated area of the county.

94 (2) ~~To~~ Issue water revenue bonds or ~~and/or~~ sewer revenue
95 bonds or general obligation bonds of the county to pay all or a
96 part of the cost of such purchase, and/or construction, or
97 reconstruction.

98 (3) ~~To~~ Fix and collect rates, fees, and other charges for
99 the service and facilities furnished by any such water supply
100 system or water system improvements and sewage disposal system
101 or sewer improvements and to fix and collect charges for making
102 connections with the water system of the county.

103 (4) ~~To~~ Receive and accept from the Federal Government or
104 any agency thereof grants for or in aid of the planning,
105 purchase, construction, reconstruction, or financing of any
106 facility and to receive and accept contributions from any source
107 of either money, property, labor, or other things of value to be
108 held, used, and applied only for the purpose for which such
109 grants and contributions may be made.

110 (5) ~~To~~ Acquire in the name of the county by gift, purchase
111 as hereinafter provided, or by the exercise of the right of
112 eminent domain, ~~such~~ lands and rights and interests therein,
113 including lands under water and riparian rights, and ~~to~~ acquire
114 such personal property as it may deem necessary for the
115 efficient operation or for the extension of or the improvement
116 of a ~~any~~ facility purchased or constructed under ~~the provisions~~

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117 ~~of~~ this chapter and ~~to~~ hold and dispose of all real and personal
118 property under its control. ~~;~~ ~~provided,~~ However, a county that
119 may not ~~no county shall have the right to~~ exercise ~~the right of~~
120 eminent domain over any such lands or rights or interests
121 therein or any personal property owned by any municipality
122 within the state or ~~nor to~~ exercise such right with respect to
123 any privately owned water supply system or sewage disposal
124 system including without limitation ponds, streams, and surface
125 waters constituting a part thereof, provided any such system is
126 primarily used, owned, or operated by an industrial or
127 manufacturing plant for its own use as a water supply system or
128 in disposing of its industrial wastes.

129 (6) ~~To~~ Make and enter into all contracts and agreements
130 necessary or incidental to the performance of its duties and the
131 execution of its powers under this chapter and ~~to~~ employ such
132 consulting and other engineers, superintendents, managers,
133 construction and accounting experts, and attorneys, and such
134 other employees and agents as it may deem necessary in its
135 judgment and ~~to~~ fix their compensation.

136 (7) Subject to the provisions and restrictions as may be
137 set forth in the resolution hereinafter mentioned authorizing or
138 securing any bonds issued under ~~the provisions of~~ this chapter,
139 ~~to~~ enter into contracts with the government of the United States
140 or any agency or instrumentality thereof or with any other
141 county or ~~with any~~ municipality, private corporation,
142 copartnership, association, or individual providing for or
143 relating to the acquisition and supplying of water and the
144 collection, treatment, and disposal of sewage.

145 (8) ~~To~~ Acquire by gift or purchase at a price to be

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146 mutually agreed upon, any of the facilities or portions thereof,
147 provided for by this chapter, which, before ~~shall, prior to~~ such
148 acquisition, must have been owned by a ~~any~~ private person,
149 group, firm, partnership, association, or corporation. ~~+~~
150 ~~provided, however,~~ If a ~~the~~ price ~~for same~~ cannot be agreed
151 upon, the price shall be determined by an arbitration board
152 consisting of three persons, one whom is ~~of whom shall be~~
153 selected by the board of county commissioners, one whom is ~~shall~~
154 ~~be~~ appointed by the private company or corporation, and the two
155 persons ~~se~~ selected shall select a third member of the
156 arbitration ~~said board,~~ and if the ~~provided, further, that in~~
157 ~~the event said~~ board cannot agree as to the price to be paid ~~by~~
158 ~~the said board of county commissioners,~~ then the board of county
159 commissioners shall exercise the right of eminent domain.

160 (9) ~~To~~ Enter into agreements and contracts with building
161 contractors erecting improvements within any duly platted
162 subdivision within the county, the terms of which ~~said~~
163 ~~agreements or contracts~~ may provide that the ~~such~~ building
164 contractors must ~~shall~~ install within the ~~such~~ subdivision water
165 mains, lines, and equipment and sewer mains and lines, ~~to be~~
166 approved by the county commission. The, ~~said~~ mains and lines
167 must ~~to~~ run to a point or location to be agreed upon, ~~at which~~
168 ~~said point or location said mains and lines shall~~ be connected
169 to the water supply system or water system improvements or
170 ~~and/or~~ to the sewage disposal system or sewer improvements of
171 the county. If ~~In the event~~ such agreements or contracts are
172 entered into they must ~~shall~~ provide that upon the connection of
173 the mains or lines within the subdivision to the water or sewer
174 facilities of the county the ~~said~~ mains, lines, and equipment

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175 running to the various privately owned parcels of land within
176 such subdivision shall become the property of the county and
177 ~~shall become~~ a part of the county water system improvements or
178 ~~and/or~~ sewer improvements.

179 (10) ~~To~~ Restrain, enjoin, or otherwise prevent a ~~any~~ person
180 or corporation, public or private, from contaminating or
181 polluting ~~(as defined in s. 387.08)~~ any source of water supply
182 from which ~~is obtained~~ water for human consumption is obtained
183 to be used in any water supply system or water system
184 improvement as authorized by this chapter, and ~~to~~ restrain,
185 enjoin, or otherwise prevent the violation of ~~any provision of~~
186 this chapter or any resolution, rule, or regulation adopted
187 pursuant to the powers granted by this chapter. ~~provided,~~
188 ~~however, that~~ This chapter does ~~shall~~ not apply to or affect any
189 existing contract that a municipality has ~~may have~~ for water or
190 sewage disposal without the consent of both parties to the ~~said~~
191 contract. ~~but~~ This subsection does ~~shall~~ not authorize the
192 institution or prosecution of any proceeding hereunder nor the
193 adoption of any resolution, rule, or regulation which affects
194 ~~shall in anywise affect~~ the right of any industrial or
195 manufacturing plant to discharge industrial waste into any
196 nonnavigable or navigable waters unless such waters are now
197 being used or are hereafter used hereunder as a source of water
198 for human consumption and unless the industrial wastes of any
199 such plant are not being discharged into such waters before
200 ~~prior to the time that~~ action is taken by the commission under
201 this chapter to include such water as a part of any water supply
202 system.

203 (11) ~~To~~ Acquire by gift or purchase, at such price, and

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204 upon such deferred or other terms, as may be mutually agreed
205 upon, ~~all~~ the capital stock of any domestic or foreign
206 corporation which, before ~~prior to~~ such acquisition, ~~shall have~~
207 owned or operated any of the facilities or portions thereof
208 provided for by this chapter; ~~to~~ pledge the revenues from the
209 facilities as security for payment of the purchase price for
210 said stock; and ~~to~~ operate the facilities through the
211 corporation so acquired or to dissolve said corporation and
212 operate the facilities in any other manner authorized by law.

213 Section 3. Subsection (2) of section 180.02, Florida
214 Statutes, is amended to read:

215 180.02 Powers of municipalities.—

216 (2) A ~~Any~~ municipality may extend and execute all of its
217 applicable corporate powers to accomplish ~~applicable for the~~
218 ~~accomplishment of~~ the purposes of this chapter outside of its
219 corporate limits, ~~as hereinafter provided and~~ as may be
220 desirable or necessary to promote ~~for the promotion of~~ the
221 public health, safety, and welfare or to accomplish ~~for the~~
222 ~~accomplishment of~~ the purposes of this chapter. ~~;~~ ~~provided,~~
223 However, such ~~that said~~ corporate powers do ~~shall~~ not extend or
224 apply within the corporate limits of another municipality or
225 within the unincorporated areas of a county without the express
226 consent of a majority of the commissioners at a duly noticed
227 meeting of the board of county commissioners of that county.

228 Section 4. Section 180.191, Florida Statutes, is amended to
229 read:

230 180.191 Limitation on rates charged consumer outside city
231 limits.—

232 (1) Any municipality within the state operating a water or

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233 sewer utility outside of the boundaries of such municipality
234 shall charge consumers outside the boundaries rates, fees, and
235 charges determined in one of the following manners:

236 (a) It may charge the same rates, fees, and charges as
237 consumers inside the municipal boundaries. However, in addition
238 thereto, the municipality may add a surcharge of not more than
239 25 percent of such rates, fees, and charges to consumers outside
240 the boundaries. Fixing of such rates, fees, and charges in this
241 manner does ~~shall~~ not require a public hearing except as may be
242 provided for service to consumers inside the municipality.

243 (b) It may charge rates, fees, and charges that are just
244 and equitable and ~~which are~~ based on the same factors used in
245 fixing the rates, fees, and charges for consumers inside the
246 municipal boundaries. In addition ~~thereto~~, the municipality may
247 add a surcharge ~~not to exceed 25 percent of such rates, fees,~~
248 ~~and charges~~ for said services to consumers outside the
249 boundaries. However, the total of all such rates, fees, and
250 charges for the services to consumers outside the boundaries may
251 ~~shall~~ not be more than 25 ~~50~~ percent greater than ~~in excess of~~
252 the total amount the municipality charges consumers served
253 within the municipality for corresponding service. ~~No~~ Such
254 rates, fees, and charges may not ~~shall~~ be fixed until after a
255 public hearing at which all of the users of the water or sewer
256 systems; owners, tenants, or occupants of property served or to
257 be served ~~thereby~~; and all others interested shall have an
258 opportunity to be heard concerning the proposed rates, fees, and
259 charges. Any change or revision of such rates, fees, or charges
260 may be made in the same manner as they ~~such rates, fees, or~~
261 ~~charges~~ were originally established, but if such change or

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262 revision is to be made substantially pro rata as to all classes
263 of service, both inside and outside the municipality, no hearing
264 or notice shall be required.

265 (c) The amount of any surcharge imposed pursuant to this
266 section must be clearly stated as a separate line item on the
267 bill of each customer to whom the surcharge is applied.

268 (2) A ratepayer in an unincorporated area of a county who
269 is receiving water or sewer utility services from a municipality
270 may petition the Florida Public Service Commission or, if the
271 municipality is located in a county that has elected to regulate
272 water and sewer utilities pursuant to chapter 367, may petition
273 the county for a review of the rates, fees, or charges being
274 imposed by the municipality. The commission or applicable county
275 shall accept the petition and determine whether such rates,
276 fees, or charges are just and equitable.

277 (3)~~(2)~~ If a ~~Whenever any~~ municipality has engaged, or there
278 are reasonable grounds to believe that any municipality is about
279 to engage, in any act or practice prohibited by subsection (1),
280 a civil action for preventive relief, including an application
281 for a permanent or temporary injunction, restraining order, or
282 other order, may be instituted by the person or persons
283 aggrieved.

284 (4)~~(3)~~ This section applies ~~shall apply~~ to municipally
285 owned water and sewer utilities within the confines of a single
286 county and may apply, pursuant to interlocal agreement, to
287 municipally owned water and sewer utilities beyond the confines
288 of a single county.

289 (5)~~(4)~~ In any action commenced pursuant to this section,
290 the court ~~in its discretion~~ may allow the prevailing party

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291 treble damages and, in addition, a reasonable attorney
292 ~~attorney's~~ fee as part of the cost.

293 Section 5. Subsection (2) of section 367.022, Florida
294 Statutes, is amended to read:

295 367.022 Exemptions.—The following are not subject to
296 regulation by the commission as a utility nor are they subject
297 to the provisions of this chapter, except as expressly provided:

298 (2) Systems owned, operated, managed, or controlled by
299 governmental authorities, including water or wastewater
300 facilities operated by private firms under water or wastewater
301 facility privatization contracts as defined in s. 153.91, and
302 nonprofit corporations formed for the purpose of acting on
303 behalf of a political subdivision with respect to a water or
304 wastewater facility; however, a municipality that provides water
305 or wastewater utility services, directly or indirectly, in
306 unincorporated areas of a county is subject to the requirements
307 set forth in s. 180.191.

308 Section 6. Subsection (4) of section 367.071, Florida
309 Statutes, is amended to read:

310 367.071 Sale, assignment, or transfer of certificate of
311 authorization, facilities, or control.—

312 (4) An application shall be disposed of as provided in s.
313 367.045, except that:

314 (a) The sale of facilities, in whole or part, to a
315 governmental authority shall be approved as a matter of right;
316 however, before taking any official action, the governmental
317 authority shall, ~~prior to taking any official action,~~ obtain
318 from the utility or commission with respect to the facilities to
319 be sold the most recent available income and expense statement,

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320 balance sheet, and statement of rate base for regulatory
321 purposes and contributions-in-aid-of-construction. Any request
322 for rate relief pending before the commission at the time of
323 sale is deemed to have been withdrawn. Interim rates, if
324 previously approved by the commission, must be discontinued, and
325 any money collected pursuant to interim rate relief must be
326 refunded to the customers of the utility with interest.

327 (b) Notwithstanding paragraph (a), approval of the
328 commission is required before a municipality acquires, in whole
329 or in part, the facilities of a utility that will serve
330 ratepayers in an unincorporated area of a county. The
331 municipality shall provide for review by the commission its
332 proposed rate structure, including proposed rates, fees, or
333 charges for ratepayers within the municipal boundaries and for
334 ratepayers in the unincorporated area of the county to be served
335 by the municipality. The commission shall approve the transfer
336 provided that:

337 1. The municipality has obtained from the utility or
338 commission, with respect to the facilities to be sold, the most
339 recent available income and expense statement, balance sheet,
340 and statement of rate base for regulatory purposes and
341 contributions-in-aid-of-construction;

342 2. The purchase price in excess of rate base is reflective
343 of all cost savings as a result of the transfer;

344 3. The transfer will result in improved quality of service;

345 4. The transfer will achieve lower operating costs;

346 5. The transfer will result in an increased ability to
347 attract capital; and

348 6. The transfer will result in more professional and

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349 experienced managerial, financial, technical, and operations
350 resources.

351 (c)~~(b)~~ When paragraph (a) does not apply, the commission
352 shall amend the certificate of authorization as necessary to
353 reflect the change resulting from the sale, assignment, or
354 transfer.

355 Section 7. This act shall take effect July 1, 2014.