

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 in unincorporated areas covered by an  
6 agreement with a municipality to provide such services  
7 in such unincorporated areas; authorizing the county  
8 to provide water and sewer services upon expiration of  
9 an agreement under certain circumstances; authorizing  
10 the county to provide water and sewer services in  
11 certain circumstances when the agreement does not  
12 contain an expiration date; amending s. 180.02, F.S.;  
13 specifying that the corporate powers of a municipality  
14 do not apply to the unincorporated areas of a county  
15 without the county's express consent; amending s.  
16 180.191, F.S.; limiting the amount of water and sewer  
17 utility rates, fees, and charges that a municipality  
18 may impose on consumers outside of the municipality's  
19 boundaries; requiring the Public Service Commission's  
20 approval of such rates, fees, and charges in certain  
21 circumstances; limiting the amount of water and sewer  
22 utility surcharges that a municipality may impose on  
23 ratepayers in unincorporated areas of a county;  
24 prohibiting new surcharges or increases in existing  
25 surcharges except in certain circumstances; requiring  
26 surcharges to be dedicated tor repayment of bonds;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

27 requiring the commission's approval of such surcharges  
 28 in certain circumstances; providing for expiration of  
 29 surcharges imposed before a specified date;  
 30 authorizing ratepayers in unincorporated areas to  
 31 petition the commission for determination whether  
 32 rates, fees, and charges imposed by a municipality are  
 33 just and equitable; amending s. 367.022, F.S.;  
 34 providing that the commission has regulatory authority  
 35 over a municipality that provides water or wastewater  
 36 utility service in unincorporated areas of a county;  
 37 amending s. 367.071, F.S.; requiring commission  
 38 approval before a municipality may purchase certain  
 39 water or wastewater facilities; providing an effective  
 40 date.

41

42 Be It Enacted by the Legislature of the State of Florida:

43

44 Section 1. This act may be cited as the "Ratepayer  
 45 Representation Act."

46 Section 2. Section 153.03, Florida Statutes, is amended to  
 47 read:

48 153.03 General grant of power.—A county ~~Any of the several~~  
 49 ~~counties of the state which may hereafter come under the~~  
 50 ~~provisions of this chapter as hereinafter provided~~ is hereby  
 51 authorized ~~and empowered~~:

52 (1) To purchase or ~~and/or~~ construct and to improve,

53 extend, enlarge, or ~~and~~ reconstruct a water supply system ~~or~~  
 54 ~~systems~~ or sewage disposal system ~~or systems, or both,~~ within  
 55 the such county and any adjoining ~~county or counties;~~ and ~~to~~  
 56 ~~purchase and/or construct or reconstruct water system~~  
 57 ~~improvements or sewer improvements, or both, within such county~~  
 58 ~~and any adjoining county or counties~~ and to operate, manage, and  
 59 control those ~~all such~~ systems ~~so purchased and/or constructed~~  
 60 and all properties pertaining thereto; and to furnish ~~and supply~~  
 61 water and sewage collection and disposal services to any of such  
 62 counties and to any municipalities and any persons, firms, or  
 63 corporations, public or private, in any of such counties. +  
 64 ~~provided,~~ However, ~~that~~ none of the facilities described in  
 65 ~~provided by~~ this chapter may be constructed, owned, operated, or  
 66 maintained by the county on property located within the  
 67 corporate limits of a any municipality without the consent of  
 68 the governing council, ~~commission or body having general~~  
 69 ~~legislative authority in the government~~ of such municipality  
 70 unless the such facilities were owned by the county before the  
 71 ~~on such property prior to the time such~~ property was included  
 72 within the corporate limits of the such municipality.

73 (a) If a municipality and a county have entered into a  
 74 franchise agreement, resolution, or ordinance that authorizes  
 75 the municipality to provide water and sewage collection and  
 76 disposal services in an unincorporated area of the county, the  
 77 ~~No~~ county may not shall furnish any of the facilities described  
 78 in provided by this chapter to that unincorporated area any

79 ~~property already being furnished like facilities by any~~  
 80 ~~municipality~~ without the express consent of the governing  
 81 ~~council, commission or body having general legislative authority~~  
 82 ~~in the government of that such~~ municipality until the franchise  
 83 agreement, resolution, or ordinance has expired. The county must  
 84 also compensate the municipality for the fair market value of  
 85 the facilities owned by the municipality that are transferred to  
 86 the county to serve the unincorporated area of the county.

87 (b) If the franchise agreement, resolution, or ordinance  
 88 contains no expiration date, the county may provide services  
 89 subject to meeting the following requirements:

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

94 2. The county compensates the municipality for the fair  
 95 market value of such facilities owned by the municipality that  
 96 are transferred to the county to serve the unincorporated area  
 97 of the county.

98 (2) To issue water revenue bonds and/or sewer revenue  
 99 bonds or general obligation bonds of the county to pay all or a  
 100 part of the cost of such purchase and/or construction or  
 101 reconstruction.

102 (3) To fix and collect rates, fees and other charges for  
 103 the service and facilities furnished by any such water supply  
 104 system or water system improvements and sewage disposal system

105 or sewer improvements and to fix and collect charges for making  
106 connections with the water system of the county.

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

114 (5) To acquire in the name of the county by gift, purchase  
115 as hereinafter provided or by the exercise of the right of  
116 eminent domain, such lands and rights and interests therein,  
117 including lands under water and riparian rights, and to acquire  
118 such personal property as it may deem necessary for the  
119 efficient operation or for the extension of or the improvement  
120 of any facility purchased or constructed under the provisions of  
121 this chapter and to hold and dispose of all real and personal  
122 property under its control; provided, however, that no county  
123 shall have the right to exercise the right of eminent domain  
124 over any such lands or rights or interests therein or any  
125 personal property owned by any municipality within the state nor  
126 to exercise such right with respect to any privately owned water  
127 supply system or sewage disposal system including without  
128 limitation ponds, streams and surface waters constituting a part  
129 thereof, provided any such system is primarily used, owned or  
130 operated by an industrial or manufacturing plant for its own use

131 as a water supply system or in disposing of its industrial  
132 wastes.

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

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

149 (8) To acquire by gift or purchase at a price to be  
150 mutually agreed upon, any of the facilities or portions thereof,  
151 provided for by this chapter, which shall, prior to such  
152 acquisition, have been owned by any private person, group, firm,  
153 partnership, association or corporation; provided, however, if  
154 the price for same cannot be agreed upon, the price shall be  
155 determined by an arbitration board consisting of three persons,  
156 one of whom shall be selected by the board of county

157 commissioners, one shall be appointed by the private company or  
158 corporation, and the two persons so selected shall select a  
159 third member of said board; and provided, further, that in the  
160 event said board cannot agree as to the price to be paid by the  
161 said board of county commissioners, then the board of county  
162 commissioners shall exercise the right of eminent domain.

163 (9) To enter into agreements and contracts with building  
164 contractors erecting improvements within any duly platted  
165 subdivision within the county, the terms of which said  
166 agreements or contracts may provide that such building  
167 contractors shall install within such subdivision water mains,  
168 lines and equipment and sewer mains and lines, to be approved by  
169 the county commission, said mains and lines to run to a point or  
170 location to be agreed upon, at which said point or location said  
171 mains and lines shall be connected to the water supply system or  
172 water system improvements and/or to the sewage disposal system  
173 or sewer improvements of the county. In the event such  
174 agreements or contracts are entered into they shall provide that  
175 upon the connection of the mains or lines within the subdivision  
176 to the water or sewer facilities of the county said mains, lines  
177 and equipment running to the various privately owned parcels of  
178 land within such subdivision shall become the property of the  
179 county and shall become a part of the county water system  
180 improvements and/or sewer improvements.

181 (10) To restrain, enjoin or otherwise prevent any person  
182 or corporation, public or private, from contaminating or

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

204 (11) To acquire by gift or purchase, at such price, and  
205 upon such deferred or other terms, as may be mutually agreed  
206 upon, all the capital stock of any domestic or foreign  
207 corporation which, prior to such acquisition, shall have owned  
208 or operated any of the facilities or portions thereof provided



209 for by this chapter; to pledge the revenues from the facilities  
 210 as security for payment of the purchase price for said stock;  
 211 and to operate the facilities through the corporation so  
 212 acquired or to dissolve said corporation and operate the  
 213 facilities in any other manner authorized by law.

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

216 180.02 Powers of municipalities.-

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

230 Section 4. Section 180.191, Florida Statutes, is amended  
 231 to read:

232 180.191 Limitation on rates charged consumer outside city  
 233 limits.-

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

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

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

245 (b) It may charge rates, fees, and charges that are just  
 246 and equitable and which are based on the same factors used in  
 247 fixing the rates, fees, and charges for consumers inside the  
 248 municipal boundaries. ~~In addition thereto, the municipality may~~  
 249 ~~add a surcharge not to exceed 25 percent of such rates, fees,~~  
 250 ~~and charges for said services to consumers outside the~~  
 251 ~~boundaries.~~ However, the total of all such rates, fees, and  
 252 charges for the services to consumers outside the boundaries  
 253 shall not be more than 25 ~~50~~ percent greater than ~~in excess of~~  
 254 the total amount the municipality charges consumers served  
 255 within the municipality for corresponding service. No such  
 256 rates, fees, and charges shall be imposed which are greater than  
 257 the total amount charged to consumers within the municipal  
 258 boundaries until the Public Service Commission reviews and  
 259 approves the rates, fees, and charges and determines they are  
 260 just and equitable ~~fixed until after a public hearing at which~~

261 ~~all of the users of the water or sewer systems; owners, tenants,~~  
262 ~~or occupants of property served or to be served thereby; and all~~  
263 ~~others interested shall have an opportunity to be heard~~  
264 ~~concerning the proposed rates, fees, and charges. Any change or~~  
265 ~~revision of such rates, fees, or charges may be made in the same~~  
266 ~~manner as such rates, fees, or charges were originally~~  
267 ~~established, but if such change or revision is to be made~~  
268 ~~substantially pro rata as to all classes of service, both inside~~  
269 ~~and outside the municipality, no hearing or notice shall be~~  
270 ~~required.~~

271 (2) A municipality operating a water or sewer utility in  
272 the unincorporated areas of a county may not impose on  
273 ratepayers in the unincorporated areas of the county a surcharge  
274 greater than 25 percent of the rates, fees, and charges imposed  
275 on ratepayers in the municipality. In addition, the following  
276 shall apply:

277 (a) Effective July 1, 2014, a municipality may not  
278 establish a new surcharge or increase an existing surcharge on  
279 ratepayers in unincorporated areas of a county unless the Public  
280 Service Commission finds that the proceeds of any new surcharge,  
281 or the existing surcharge and any new increase, are dedicated  
282 exclusively to repayment of that portion of bonds issued by the  
283 municipality to finance the facilities that serve the  
284 unincorporated areas. The commission must also determine the  
285 appropriate rate and duration of the surcharge necessary to  
286 accomplish this purpose. However, the total surcharge may not

287 exceed 25 percent of the rates, fees, and charges applied to  
288 ratepayers inside the municipal boundaries.

289 (b) Effective July 1, 2018, a surcharge imposed by a  
290 municipality on or before July 1, 2014, on ratepayers in  
291 unincorporated areas of a county, which surcharge exceeds 15  
292 percent of the rates, fees, and charges applied to ratepayers  
293 inside the municipal boundaries, must be approved by the Public  
294 Service Commission. The commission must find that the proceeds  
295 from the entire surcharge are dedicated exclusively to repayment  
296 of that portion of bonds issued by the municipality to finance  
297 the facilities that serve the unincorporated areas. The  
298 commission shall determine the rate and duration of the  
299 surcharge necessary to accomplish this purpose. However, the  
300 total surcharge may not exceed 25 percent of the rates, fees,  
301 and charges applied to ratepayers inside the municipal  
302 boundaries.

303 (c) A surcharge imposed by a municipality on or before  
304 July 1, 2014, on ratepayers in unincorporated areas of a county  
305 shall expire effective July 1, 2024, and may not be imposed by  
306 the municipality after such date unless approved by the Public  
307 Service Commission. The commission must find that the existing  
308 surcharge are dedicated exclusively to repayment of that portion  
309 of bonds issued by the municipality to finance the facilities  
310 that serve the unincorporated areas. The commission shall  
311 determine the appropriate rate and duration of any surcharge  
312 necessary to accomplish this purpose. However, the total

313 surcharge may not exceed 25 percent of the rates, fees, and  
 314 charges applied to ratepayers inside the municipal boundaries. A  
 315 municipality whose surcharge is approved by the commission as  
 316 set forth in paragraph (b) is deemed to have received commission  
 317 approval under this paragraph.

318 (3) A ratepayer in an unincorporated area of a county who  
 319 is receiving water or sewer utility services from a municipality  
 320 may petition the Public Service Commission for a review of the  
 321 rates, fees, or charges being imposed by the municipality. The  
 322 Public Service Commission shall accept such petition and  
 323 determine whether such rates, fees, and charges are just and  
 324 equitable.

325 (4)-(2) Whenever any municipality has engaged, or there are  
 326 reasonable grounds to believe that any municipality is about to  
 327 engage, in any act or practice prohibited by subsection (1) or  
 328 subsection (2), a civil action for preventive relief, including  
 329 an application for a permanent or temporary injunction,  
 330 restraining order, or other order, may be instituted by the  
 331 person or persons aggrieved.

332 (5)-(3) This section shall apply to municipally owned water  
 333 and sewer utilities within the confines of a single county and  
 334 may apply, pursuant to interlocal agreement, to municipally  
 335 owned water and sewer utilities beyond the confines of a single  
 336 county.

337 (6)-(4) In any action commenced pursuant to this section,  
 338 the court in its discretion may allow the prevailing party

339 | treble damages and, in addition, a reasonable attorney  
 340 | ~~attorney's~~ fee as part of the cost.

341 |         Section 5. Subsection (2) of section 367.022, Florida  
 342 | Statutes, is amended to read:

343 |             367.022 Exemptions.—The following are not subject to  
 344 | regulation by the commission as a utility nor are they subject  
 345 | to the provisions of this chapter, except as expressly provided:

346 |             (2) Systems owned, operated, managed, or controlled by  
 347 | governmental authorities, including water or wastewater  
 348 | facilities operated by private firms under water or wastewater  
 349 | facility privatization contracts as defined in s. 153.91, and  
 350 | nonprofit corporations formed for the purpose of acting on  
 351 | behalf of a political subdivision with respect to a water or  
 352 | wastewater facility; however, any municipality that provides  
 353 | water or wastewater utility service, directly or indirectly, in  
 354 | unincorporated areas of the county is subject to regulation by  
 355 | the commission as set forth in s. 180.191.

356 |         Section 6. Subsection (4) of section 367.071, Florida  
 357 | Statutes, is amended to read:

358 |             367.071 Sale, assignment, or transfer of certificate of  
 359 | authorization, facilities, or control.—

360 |             (4) An application shall be disposed of as provided in s.  
 361 | 367.045, except that:

362 |             (a) The sale of facilities, in whole or part, to a  
 363 | governmental authority shall be approved as a matter of right;  
 364 | however, before taking any official action, the governmental

365 authority shall, ~~prior to taking any official action,~~ obtain  
366 from the utility or commission with respect to the facilities to  
367 be sold the most recent available income and expense statement,  
368 balance sheet, and statement of rate base for regulatory  
369 purposes and contributions-in-aid-of-construction. Any request  
370 for rate relief pending before the commission at the time of  
371 sale is deemed to have been withdrawn. Interim rates, if  
372 previously approved by the commission, must be discontinued, and  
373 any money collected pursuant to interim rate relief must be  
374 refunded to the customers of the utility with interest.

375 (b) Notwithstanding paragraph (a), approval of the  
376 commission is required before a municipality acquires, in whole  
377 or in part, the facilities of a utility that will serve  
378 ratepayers in unincorporated areas of the county. As part of the  
379 approval process, the commission shall review the utility's most  
380 recent available income and expense statement, balance sheet,  
381 contributions-in-aid-of-construction, rates, classification, and  
382 charges for service of every kind provided by the utility. The  
383 municipality shall provide its proposed rate structure,  
384 including proposed rates, fees, and charges for ratepayers  
385 within the municipal boundaries and for ratepayers in  
386 unincorporated areas of the county to be served by the  
387 municipality. If a municipality, as part of the acquisition,  
388 will impose a surcharge on ratepayers in unincorporated areas of  
389 the county, the municipality is subject to s. 180.191.

390 (c) ~~(b)~~ When paragraph (a) does not apply, the commission

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391 | shall amend the certificate of authorization as necessary to  
392 | reflect the change resulting from the sale, assignment, or  
393 | transfer.

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