

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

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1 Committee/Subcommittee hearing bill: Commerce Committee  
 2 Representative McClain offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Paragraph (g) of subsection (7) of section 163.01, Florida Statutes, is amended to read:

163.01 Florida Interlocal Cooperation Act of 1969.—  
(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 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

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

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

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

34 b. "Separate legal entity" means any entity created by  
35 interlocal agreement the membership of which is limited to two  
36 or more special districts, municipalities, or counties of the  
37 state, but which entity is legally separate and apart from any  
38 of its member governments.

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

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41 d. "Utility" means a water or wastewater utility and  
42 includes every person, separate legal entity, lessee, trustee,  
43 or receiver owning, operating, managing, or controlling a  
44 system, or proposing construction of a system, who is providing,  
45 or proposes to provide, water or wastewater service to the  
46 public for compensation.

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

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

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65 prohibits the acquisition may include conditions that would make  
66 the proposal acceptable to the host government.

67 b. If a host government adopts a membership resolution,  
68 the separate legal entity shall accept the host government as a  
69 member on the same basis as its existing members before any  
70 transfer of ownership, use, or possession of the utility or the  
71 utility facilities. If a host government adopts a resolution to  
72 approve the utility acquisition, the separate legal entity may  
73 complete the acquisition. If a host government adopts a  
74 prohibition resolution, the separate legal entity may not  
75 acquire the utility within that host government's territory  
76 without the specific consent of the host government by future  
77 resolution. If a host government does not adopt a prohibition  
78 resolution or an approval resolution, the separate legal entity  
79 may proceed to acquire the utility after the 30-day notice  
80 period without further notice.

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

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90 payment to a member, special district, or other local government  
91 must be solely from user fees or other charges or revenues  
92 generated from customers that are physically located within the  
93 jurisdictional or service delivery boundaries of the member,  
94 special district, or local government receiving the transfer of  
95 payment.

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

101 7. The entity may finance or refinance the acquisition,  
102 construction, expansion, and improvement of such facilities  
103 relating to a governmental function or purpose through the  
104 issuance of its bonds, notes, or other obligations under this  
105 section or as otherwise authorized by law. The entity has all  
106 the powers provided by the interlocal agreement under which it  
107 is created or which are necessary to finance, own, operate, or  
108 manage the public facility, including, without limitation, the  
109 power to establish rates, charges, and fees for products or  
110 services provided by it, the power to levy special assessments,  
111 the power to sell or finance all or a portion of such facility,  
112 and the power to contract with a public or private entity to  
113 manage and operate such facilities or to provide or receive  
114 facilities, services, or products. Except as may be limited by

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115 the interlocal agreement under which the entity is created, all  
116 of the privileges, benefits, powers, and terms of s. 125.01,  
117 relating to counties, and s. 166.021, relating to  
118 municipalities, are fully applicable to the entity. However,  
119 neither the entity nor any of its members on behalf of the  
120 entity may exercise the power of eminent domain over the  
121 facilities or property of any existing water or wastewater plant  
122 utility system, nor may the entity acquire title to any water or  
123 wastewater plant utility facilities, other facilities, or  
124 property which was acquired by the use of eminent domain after  
125 the effective date of this act unless 10 or more years have  
126 elapsed since the date of the acquisition by eminent domain.  
127 Bonds, notes, and other obligations issued by the entity are  
128 issued on behalf of the public agencies that are members of the  
129 entity.

130 8. Any entity created under this section may also issue  
131 bond anticipation notes in connection with the authorization,  
132 issuance, and sale of bonds. The bonds may be issued as serial  
133 bonds or as term bonds or both. Any entity may issue capital  
134 appreciation bonds or variable rate bonds. Any bonds, notes, or  
135 other obligations must be authorized by resolution of the  
136 governing body of the entity and bear the date or dates; mature  
137 at the time or times, not exceeding 40 years from their  
138 respective dates; bear interest at the rate or rates; be payable  
139 at the time or times; be in the denomination; be in the form;

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140 carry the registration privileges; be executed in the manner; be  
141 payable from the sources and in the medium or payment and at the  
142 place; and be subject to the terms of redemption, including  
143 redemption prior to maturity, as the resolution may provide. If  
144 any officer whose signature, or a facsimile of whose signature,  
145 appears on any bonds, notes, or other obligations ceases to be  
146 an officer before the delivery of the bonds, notes, or other  
147 obligations, the signature or facsimile is valid and sufficient  
148 for all purposes as if he or she had remained in office until  
149 the delivery. The bonds, notes, or other obligations may be sold  
150 at public or private sale for such price as the governing body  
151 of the entity shall determine. Pending preparation of the  
152 definitive bonds, the entity may issue interim certificates,  
153 which shall be exchanged for the definitive bonds. The bonds may  
154 be secured by a form of credit enhancement, if any, as the  
155 entity deems appropriate. The bonds may be secured by an  
156 indenture of trust or trust agreement. In addition, the  
157 governing body of the legal entity may delegate, to an officer,  
158 official, or agent of the legal entity as the governing body of  
159 the legal entity may select, the power to determine the time;  
160 manner of sale, public or private; maturities; rate of interest,  
161 which may be fixed or may vary at the time and in accordance  
162 with a specified formula or method of determination; and other  
163 terms and conditions as may be deemed appropriate by the  
164 officer, official, or agent so designated by the governing body

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165 of the legal entity. However, the amount and maturity of the  
166 bonds, notes, or other obligations and the interest rate of the  
167 bonds, notes, or other obligations must be within the limits  
168 prescribed by the governing body of the legal entity and its  
169 resolution delegating to an officer, official, or agent the  
170 power to authorize the issuance and sale of the bonds, notes, or  
171 other obligations.

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

187 10. The accomplishment of the authorized purposes of a  
188 legal entity created under this paragraph is in all respects for  
189 the benefit of the people of the state, for the increase of

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190 their commerce and prosperity, and for the improvement of their  
191 health and living conditions. Since the legal entity will  
192 perform essential governmental functions for the public health,  
193 safety, and welfare in accomplishing its purposes, the legal  
194 entity is not required to pay any taxes or assessments of any  
195 kind whatsoever upon any property acquired or used by it for  
196 such purposes or upon any revenues at any time received by it,  
197 whether the property is within or outside the jurisdiction of  
198 members of the entity. The exemption provided in this paragraph  
199 applies regardless of whether the separate legal entity enters  
200 into agreements with private firms or entities to manage,  
201 operate, or improve the utilities owned by the separate legal  
202 entity. The bonds, notes, and other obligations of an entity,  
203 their transfer, and the income therefrom, including any profits  
204 made on the sale thereof, are at all times free from taxation of  
205 any kind by the state or by any political subdivision or other  
206 agency or instrumentality thereof. The exemption granted in this  
207 subparagraph is not applicable to any tax imposed by chapter 220  
208 on interest, income, or profits on debt obligations owned by  
209 corporations.

210 Section 2. Section 367.0712, Florida Statutes, is created  
211 to read:

212 367.0712 Alternative process to establish rate base value  
213 of acquired system.-

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214 (1) (a) When a utility acquires an existing utility system,  
215 including a system described in subsection (2) of s. 367.022,  
216 the utility may petition the commission to establish a rate base  
217 value for the utility system being acquired that is determined  
218 using the valuation process described in this section instead of  
219 the system's original cost. If the petition meets the filing  
220 requirements of subsection (3), the commission, no later than 8  
221 months after the date the complete petition is filed, shall  
222 issue a final order on the petition. The commission may grant  
223 the petition, in whole or in part or with modifications in the  
224 public interest, or may deny the petition if in the public  
225 interest. The commission may not approve a rate base value  
226 higher than that requested in the petition.

227 (b) The rate base value established by the commission  
228 under this section shall be used for ratemaking purposes in the  
229 acquiring utility's next general rate case. The rate base value  
230 may not exceed the lesser of the purchase price negotiated  
231 between the parties to the acquisition transaction or the  
232 average of the two appraisals conducted under subsection (2),  
233 except that it may also include reasonable transaction and  
234 closing costs incurred by the acquiring utility and reasonable  
235 fees paid to the appraisers.

236 (2) (a) For purposes of this section, the utility system  
237 being acquired must be appraised by two licensed appraisers  
238 chosen from a list established by the commission. One appraiser

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239 shall be chosen and paid by the acquiring utility, and one  
240 appraiser shall be chosen and paid by the utility system being  
241 acquired. Each appraiser shall provide an appraisal of the value  
242 of the utility system being acquired consistent with the Uniform  
243 Standards of Professional Appraisal Practice.

244 (b) The acquiring utility and the utility system being  
245 acquired shall jointly retain a licensed engineer to conduct an  
246 assessment of the tangible assets of the utility system being  
247 acquired, and the assessment shall be provided to the two  
248 appraisers for use in determining the value of the system.

249 (3) A petition filed under this section to establish the  
250 rate base value for a utility system being acquired must contain  
251 the following:

252 (a) The requested rate base value for the utility system  
253 being acquired.

254 (b) Copies of the appraisals required by this section,  
255 including the average of the valuations produced by each  
256 appraisal.

257 (c) A copy of the assessment of tangible assets required  
258 by this section.

259 (d) A 3-year plan to address each deficiency identified by  
260 the assessment of tangible assets required by this section. The  
261 plan must address impact on quality of service and address any  
262 planned improvements to water quality.

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263 (e) The 5-year projected rate impact on the customers of  
264 the utility system being acquired, including, but not limited  
265 to, the rate impact of the following:

266 (i) Any cost efficiencies expected to result from the  
267 transaction; and

268 (ii) Use of this section, in lieu of the original cost  
269 method, to establish rate base.

270 (f) The contract of sale.

271 (g) The estimated value of fees and transaction and  
272 closing costs to be incurred by the acquiring utility.

273 (h) A tariff, including rates equal to the rates of the  
274 utility system being acquired.

275 (4) Notwithstanding any provision in this section, the  
276 commission retains its authority under this chapter to set rates  
277 for the acquired utility system in future rate cases and may  
278 classify the acquired utility system as a separate entity for  
279 ratemaking purposes, as it deems to be in the public interest.

280 (5) This section applies to acquiring utilities that  
281 provide water service, wastewater service, or both to more than  
282 10,000 customers and are engaged in an arms-length acquisition  
283 of a water system, wastewater system, or both types of systems.

284 (6) The commission shall adopt rules to implement this  
285 section.

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**T I T L E   A M E N D M E N T**

Remove everything before the enacting clause and insert:  
An act relating to acquisition of water and wastewater systems;  
amending s. 163.01, F.S.; providing a condition under which  
certain entities may acquire title to any water or wastewater  
plant utility facilities, other facilities, or property, that  
were previously acquired by eminent domain; creating s.  
367.0712, F.S.; establishing an alternative method by which the  
Public Service Commission, upon petition by certain water and  
wastewater utilities, may establish the rate base value for an  
acquired utility system; specifying duties of the commission  
regarding petitions and providing a standard of review;  
requiring the approved rate base value to be reflected in the  
acquiring utility's next rate case for ratemaking purposes;  
establishing a procedure for appraisal of the acquired utility  
system; specifying the contents required for a petition to the  
Public Service Commission for approval of the rate base value of  
the acquired utility system; specifying the commission's  
retained authority; providing applicability; requiring the  
commission to adopt rules; providing an effective date.