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HB 487, Engrossed 1

2021 Legislature

1
 2 An act relating to growth management; amending s.
 3 163.3167, F.S.; authorizing landowners with
 4 development orders existing before the incorporation
 5 of a municipality to elect to abandon such orders and
 6 develop the vested density and intensity contained
 7 therein under specified conditions; amending s.
 8 163.01, F.S.; providing an exception to a prohibition
 9 against legal entities and their members exercising
 10 the power of eminent domain over or acquiring title to
 11 certain facilities or property; amending s. 163.3187,
 12 F.S.; revising the required acreage thresholds for
 13 adopting an amendment using a small scale development
 14 amendment; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Subsection (5) of section 163.3167, Florida
 19 Statutes, is amended to read:

20 163.3167 Scope of act.—

21 (5) Nothing in this act shall limit or modify the rights
 22 of any person to complete any development that has been
 23 authorized as a development of regional impact pursuant to
 24 chapter 380 or who has been issued a final local development
 25 order and development has commenced and is continuing in good

ENROLLED

HB 487, Engrossed 1

2021 Legislature

26 | faith. Any landowner with a development order existing before
27 | the incorporation of a municipality may elect to abandon the
28 | development order and develop the vested density and intensity
29 | contained therein pursuant to the municipality's comprehensive
30 | plan and land development regulations adopted pursuant to
31 | subsection (3) so long as the vested uses, density, and
32 | intensity are consistent with the municipality's comprehensive
33 | plan and all existing obligations in the development order
34 | regarding concurrency remain.

35 | Section 2. Paragraph (g) of subsection (7) of section
36 | 163.01, Florida Statutes, is amended to read:

37 | 163.01 Florida Interlocal Cooperation Act of 1969.—

38 | (7)

39 | (g)1. Notwithstanding any other provisions of this
40 | section, any separate legal entity created under this section,
41 | the membership of which is limited to municipalities and
42 | counties of the state, and which may include a special district
43 | in addition to a municipality or county or both, may acquire,
44 | own, construct, improve, operate, and manage public facilities,
45 | or finance facilities on behalf of any person, relating to a
46 | governmental function or purpose, including, but not limited to,
47 | wastewater facilities, water or alternative water supply
48 | facilities, and water reuse facilities, which may serve
49 | populations within or outside of the members of the entity.
50 | Notwithstanding s. 367.171(7), any separate legal entity created

ENROLLED

HB 487, Engrossed 1

2021 Legislature

51 | under this paragraph is not subject to Public Service Commission
52 | jurisdiction. The separate legal entity may not provide utility
53 | services within the service area of an existing utility system
54 | unless it has received the consent of the utility.

55 | 2. For purposes of this paragraph, the term:

56 | a. "Host government" means the governing body of the
57 | county, if the largest number of equivalent residential
58 | connections currently served by a system of the utility is
59 | located in the unincorporated area, or the governing body of a
60 | municipality, if the largest number of equivalent residential
61 | connections currently served by a system of the utility is
62 | located within that municipality's boundaries.

63 | b. "Separate legal entity" means any entity created by
64 | interlocal agreement the membership of which is limited to two
65 | or more special districts, municipalities, or counties of the
66 | state, but which entity is legally separate and apart from any
67 | of its member governments.

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

70 | d. "Utility" means a water or wastewater utility and
71 | includes every person, separate legal entity, lessee, trustee,
72 | or receiver owning, operating, managing, or controlling a
73 | system, or proposing construction of a system, who is providing,
74 | or proposes to provide, water or wastewater service to the
75 | public for compensation.

ENROLLED

HB 487, Engrossed 1

2021 Legislature

76 3. A separate legal entity that seeks to acquire any
77 utility shall notify the host government in writing by certified
78 mail about the contemplated acquisition not less than 30 days
79 before any proposed transfer of ownership, use, or possession of
80 any utility assets by such separate legal entity. The potential
81 acquisition notice shall be provided to the legislative head of
82 the governing body of the host government and to its chief
83 administrative officer and shall provide the name and address of
84 a contact person for the separate legal entity and information
85 identified in s. 367.071(4)(a) concerning the contemplated
86 acquisition.

87 4.a. Within 30 days following receipt of the notice, the
88 host government may adopt a resolution to become a member of the
89 separate legal entity, adopt a resolution to approve the utility
90 acquisition, or adopt a resolution to prohibit the utility
91 acquisition by the separate legal entity if the host government
92 determines that the proposed acquisition is not in the public
93 interest. A resolution adopted by the host government which
94 prohibits the acquisition may include conditions that would make
95 the proposal acceptable to the host government.

96 b. If a host government adopts a membership resolution,
97 the separate legal entity shall accept the host government as a
98 member on the same basis as its existing members before any
99 transfer of ownership, use, or possession of the utility or the
100 utility facilities. If a host government adopts a resolution to

ENROLLED

HB 487, Engrossed 1

2021 Legislature

101 approve the utility acquisition, the separate legal entity may
102 complete the acquisition. If a host government adopts a
103 prohibition resolution, the separate legal entity may not
104 acquire the utility within that host government's territory
105 without the specific consent of the host government by future
106 resolution. If a host government does not adopt a prohibition
107 resolution or an approval resolution, the separate legal entity
108 may proceed to acquire the utility after the 30-day notice
109 period without further notice.

110 5. After the acquisition or construction of any utility
111 systems by a separate legal entity created under this paragraph,
112 revenues or any other income may not be transferred or paid to a
113 member of a separate legal entity, or to any other special
114 district, county, or municipality, from user fees or other
115 charges or revenues generated from customers that are not
116 physically located within the jurisdictional or service delivery
117 boundaries of the member, special district, county, or
118 municipality receiving the transfer or payment. Any transfer or
119 payment to a member, special district, or other local government
120 must be solely from user fees or other charges or revenues
121 generated from customers that are physically located within the
122 jurisdictional or service delivery boundaries of the member,
123 special district, or local government receiving the transfer of
124 payment.

125 6. This section is an alternative provision otherwise

ENROLLED

HB 487, Engrossed 1

2021 Legislature

126 | provided by law as authorized in s. 4, Art. VIII of the State
127 | Constitution for any transfer of power as a result of an
128 | acquisition of a utility by a separate legal entity from a
129 | municipality, county, or special district.

130 | 7. The entity may finance or refinance the acquisition,
131 | construction, expansion, and improvement of such facilities
132 | relating to a governmental function or purpose through the
133 | issuance of its bonds, notes, or other obligations under this
134 | section or as otherwise authorized by law. The entity has all
135 | the powers provided by the interlocal agreement under which it
136 | is created or which are necessary to finance, own, operate, or
137 | manage the public facility, including, without limitation, the
138 | power to establish rates, charges, and fees for products or
139 | services provided by it, the power to levy special assessments,
140 | the power to sell or finance all or a portion of such facility,
141 | and the power to contract with a public or private entity to
142 | manage and operate such facilities or to provide or receive
143 | facilities, services, or products. Except as may be limited by
144 | the interlocal agreement under which the entity is created, all
145 | of the privileges, benefits, powers, and terms of s. 125.01,
146 | relating to counties, and s. 166.021, relating to
147 | municipalities, are fully applicable to the entity. However,
148 | neither the entity nor any of its members on behalf of the
149 | entity may exercise the power of eminent domain over the
150 | facilities or property of any existing water or wastewater plant

ENROLLED

HB 487, Engrossed 1

2021 Legislature

151 utility system, nor may the entity acquire title to any water or
152 wastewater plant utility facilities, other facilities, or
153 property which was acquired by the use of eminent domain after
154 the effective date of this act, unless 10 or more years have
155 elapsed since the date of the acquisition by eminent domain.

156 Bonds, notes, and other obligations issued by the entity are
157 issued on behalf of the public agencies that are members of the
158 entity.

159 8. Any entity created under this section may also issue
160 bond anticipation notes in connection with the authorization,
161 issuance, and sale of bonds. The bonds may be issued as serial
162 bonds or as term bonds or both. Any entity may issue capital
163 appreciation bonds or variable rate bonds. Any bonds, notes, or
164 other obligations must be authorized by resolution of the
165 governing body of the entity and bear the date or dates; mature
166 at the time or times, not exceeding 40 years from their
167 respective dates; bear interest at the rate or rates; be payable
168 at the time or times; be in the denomination; be in the form;
169 carry the registration privileges; be executed in the manner; be
170 payable from the sources and in the medium or payment and at the
171 place; and be subject to the terms of redemption, including
172 redemption prior to maturity, as the resolution may provide. If
173 any officer whose signature, or a facsimile of whose signature,
174 appears on any bonds, notes, or other obligations ceases to be
175 an officer before the delivery of the bonds, notes, or other

ENROLLED

HB 487, Engrossed 1

2021 Legislature

176 obligations, the signature or facsimile is valid and sufficient
177 for all purposes as if he or she had remained in office until
178 the delivery. The bonds, notes, or other obligations may be sold
179 at public or private sale for such price as the governing body
180 of the entity shall determine. Pending preparation of the
181 definitive bonds, the entity may issue interim certificates,
182 which shall be exchanged for the definitive bonds. The bonds may
183 be secured by a form of credit enhancement, if any, as the
184 entity deems appropriate. The bonds may be secured by an
185 indenture of trust or trust agreement. In addition, the
186 governing body of the legal entity may delegate, to an officer,
187 official, or agent of the legal entity as the governing body of
188 the legal entity may select, the power to determine the time;
189 manner of sale, public or private; maturities; rate of interest,
190 which may be fixed or may vary at the time and in accordance
191 with a specified formula or method of determination; and other
192 terms and conditions as may be deemed appropriate by the
193 officer, official, or agent so designated by the governing body
194 of the legal entity. However, the amount and maturity of the
195 bonds, notes, or other obligations and the interest rate of the
196 bonds, notes, or other obligations must be within the limits
197 prescribed by the governing body of the legal entity and its
198 resolution delegating to an officer, official, or agent the
199 power to authorize the issuance and sale of the bonds, notes, or
200 other obligations.

ENROLLED

HB 487, Engrossed 1

2021 Legislature

201 9. Bonds, notes, or other obligations issued under this
202 paragraph may be validated as provided in chapter 75. The
203 complaint in any action to validate the bonds, notes, or other
204 obligations must be filed only in the Circuit Court for Leon
205 County. The notice required to be published by s. 75.06 must be
206 published in Leon County and in each county that is a member of
207 the entity issuing the bonds, notes, or other obligations, or in
208 which a member of the entity is located, and the complaint and
209 order of the circuit court must be served only on the State
210 Attorney of the Second Judicial Circuit and on the state
211 attorney of each circuit in each county that is a member of the
212 entity issuing the bonds, notes, or other obligations or in
213 which a member of the entity is located. Section 75.04(2) does
214 not apply to a complaint for validation brought by the legal
215 entity.

216 10. The accomplishment of the authorized purposes of a
217 legal entity created under this paragraph is in all respects for
218 the benefit of the people of the state, for the increase of
219 their commerce and prosperity, and for the improvement of their
220 health and living conditions. Since the legal entity will
221 perform essential governmental functions for the public health,
222 safety, and welfare in accomplishing its purposes, the legal
223 entity is not required to pay any taxes or assessments of any
224 kind whatsoever upon any property acquired or used by it for
225 such purposes or upon any revenues at any time received by it,

ENROLLED

HB 487, Engrossed 1

2021 Legislature

226 whether the property is within or outside the jurisdiction of
227 members of the entity. The exemption provided in this paragraph
228 applies regardless of whether the separate legal entity enters
229 into agreements with private firms or entities to manage,
230 operate, or improve the utilities owned by the separate legal
231 entity. The bonds, notes, and other obligations of an entity,
232 their transfer, and the income therefrom, including any profits
233 made on the sale thereof, are at all times free from taxation of
234 any kind by the state or by any political subdivision or other
235 agency or instrumentality thereof. The exemption granted in this
236 subparagraph is not applicable to any tax imposed by chapter 220
237 on interest, income, or profits on debt obligations owned by
238 corporations.

239 Section 3. Paragraph (a) of subsection (1) and subsection
240 (3) of section 163.3187, Florida Statutes, are amended to read:

241 163.3187 Process for adoption of small-scale comprehensive
242 plan amendment.—

243 (1) A small scale development amendment may be adopted
244 under the following conditions:

245 (a) The proposed amendment involves a use of 50 ~~40~~ acres
246 or fewer and:

247 (3) If the small scale development amendment involves a
248 site within a rural area of opportunity as defined under s.
249 288.0656(2)(d) for the duration of such designation, the acreage
250 ~~10-acre~~ limit listed in subsection (1) shall be increased by 100

ENROLLED

HB 487, Engrossed 1

2021 Legislature

251 | percent ~~to 20 acres~~. The local government approving the small
252 | scale plan amendment shall certify to the state land planning
253 | agency that the plan amendment furthers the economic objectives
254 | set forth in the executive order issued under s. 288.0656(7),
255 | and the property subject to the plan amendment shall undergo
256 | public review to ensure that all concurrency requirements and
257 | federal, state, and local environmental permit requirements are
258 | met.

259 | Section 4. This act shall take effect July 1, 2021.