

1                   A bill to be entitled  
2           An act relating to acquisition of water and wastewater  
3           systems; amending s. 163.01, F.S.; providing  
4           conditions under which certain entities may acquire  
5           title to any water or wastewater plant utility  
6           facilities, other facilities, or property, which were  
7           previously acquired by eminent domain; creating s.  
8           367.0712, F.S.; establishing an alternative method by  
9           which the Public Service Commission, upon petition by  
10          certain water and wastewater utilities, may establish  
11          the rate base value for an acquired utility system;  
12          specifying duties of the commission regarding  
13          petitions and providing a standard of review;  
14          requiring the approved rate base value to be reflected  
15          in the acquiring utility's next rate case for  
16          ratemaking purposes; establishing a procedure for  
17          appraisal of the acquired utility system; specifying  
18          the contents required for a petition to the Public  
19          Service Commission for approval of the rate base value  
20          of the acquired utility system; specifying the  
21          commission's retained authority; providing  
22          applicability; requiring the commission to adopt  
23          rules; providing an effective date.

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

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

2. For purposes of this paragraph, the term:

a. "Host government" means the governing body of the county, if the largest number of equivalent residential connections currently served by a system of the utility is

51 | located in the unincorporated area, or the governing body of a  
52 | municipality, if the largest number of equivalent residential  
53 | connections currently served by a system of the utility is  
54 | located within that municipality's boundaries.

55 |       b. "Separate legal entity" means any entity created by  
56 | interlocal agreement the membership of which is limited to two  
57 | or more special districts, municipalities, or counties of the  
58 | state, but which entity is legally separate and apart from any  
59 | of its member governments.

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

62 |       d. "Utility" means a water or wastewater utility and  
63 | includes every person, separate legal entity, lessee, trustee,  
64 | or receiver owning, operating, managing, or controlling a  
65 | system, or proposing construction of a system, who is providing,  
66 | or proposes to provide, water or wastewater service to the  
67 | public for compensation.

68 |       3. A separate legal entity that seeks to acquire any  
69 | utility shall notify the host government in writing by certified  
70 | mail about the contemplated acquisition not less than 30 days  
71 | before any proposed transfer of ownership, use, or possession of  
72 | any utility assets by such separate legal entity. The potential  
73 | acquisition notice shall be provided to the legislative head of  
74 | the governing body of the host government and to its chief  
75 | administrative officer and shall provide the name and address of

76 a contact person for the separate legal entity and information  
77 identified in s. 367.071(4)(a) concerning the contemplated  
78 acquisition.

79 4.a. Within 30 days following receipt of the notice, the  
80 host government may adopt a resolution to become a member of the  
81 separate legal entity, adopt a resolution to approve the utility  
82 acquisition, or adopt a resolution to prohibit the utility  
83 acquisition by the separate legal entity if the host government  
84 determines that the proposed acquisition is not in the public  
85 interest. A resolution adopted by the host government which  
86 prohibits the acquisition may include conditions that would make  
87 the proposal acceptable to the host government.

88 b. If a host government adopts a membership resolution,  
89 the separate legal entity shall accept the host government as a  
90 member on the same basis as its existing members before any  
91 transfer of ownership, use, or possession of the utility or the  
92 utility facilities. If a host government adopts a resolution to  
93 approve the utility acquisition, the separate legal entity may  
94 complete the acquisition. If a host government adopts a  
95 prohibition resolution, the separate legal entity may not  
96 acquire the utility within that host government's territory  
97 without the specific consent of the host government by future  
98 resolution. If a host government does not adopt a prohibition  
99 resolution or an approval resolution, the separate legal entity  
100 may proceed to acquire the utility after the 30-day notice

101 period without further notice.

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

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

122       7. The entity may finance or refinance the acquisition,  
123 construction, expansion, and improvement of such facilities  
124 relating to a governmental function or purpose through the  
125 issuance of its bonds, notes, or other obligations under this

126 section or as otherwise authorized by law. The entity has all  
127 the powers provided by the interlocal agreement under which it  
128 is created or which are necessary to finance, own, operate, or  
129 manage the public facility, including, without limitation, the  
130 power to establish rates, charges, and fees for products or  
131 services provided by it, the power to levy special assessments,  
132 the power to sell or finance all or a portion of such facility,  
133 and the power to contract with a public or private entity to  
134 manage and operate such facilities or to provide or receive  
135 facilities, services, or products. Except as may be limited by  
136 the interlocal agreement under which the entity is created, all  
137 of the privileges, benefits, powers, and terms of s. 125.01,  
138 relating to counties, and s. 166.021, relating to  
139 municipalities, are fully applicable to the entity. However,  
140 neither the entity nor any of its members on behalf of the  
141 entity may exercise the power of eminent domain over the  
142 facilities or property of any existing water or wastewater plant  
143 utility system, nor may the entity acquire title to any water or  
144 wastewater plant utility facilities, other facilities, or  
145 property which was acquired by the use of eminent domain after  
146 the effective date of this act unless 10 or more years have  
147 elapsed since the date of the acquisition by eminent domain.  
148 Bonds, notes, and other obligations issued by the entity are  
149 issued on behalf of the public agencies that are members of the  
150 entity.

151           8. Any entity created under this section may also issue  
152 bond anticipation notes in connection with the authorization,  
153 issuance, and sale of bonds. The bonds may be issued as serial  
154 bonds or as term bonds or both. Any entity may issue capital  
155 appreciation bonds or variable rate bonds. Any bonds, notes, or  
156 other obligations must be authorized by resolution of the  
157 governing body of the entity and bear the date or dates; mature  
158 at the time or times, not exceeding 40 years from their  
159 respective dates; bear interest at the rate or rates; be payable  
160 at the time or times; be in the denomination; be in the form;  
161 carry the registration privileges; be executed in the manner; be  
162 payable from the sources and in the medium or payment and at the  
163 place; and be subject to the terms of redemption, including  
164 redemption prior to maturity, as the resolution may provide. If  
165 any officer whose signature, or a facsimile of whose signature,  
166 appears on any bonds, notes, or other obligations ceases to be  
167 an officer before the delivery of the bonds, notes, or other  
168 obligations, the signature or facsimile is valid and sufficient  
169 for all purposes as if he or she had remained in office until  
170 the delivery. The bonds, notes, or other obligations may be sold  
171 at public or private sale for such price as the governing body  
172 of the entity shall determine. Pending preparation of the  
173 definitive bonds, the entity may issue interim certificates,  
174 which shall be exchanged for the definitive bonds. The bonds may  
175 be secured by a form of credit enhancement, if any, as the

176 | entity deems appropriate. The bonds may be secured by an  
177 | indenture of trust or trust agreement. In addition, the  
178 | governing body of the legal entity may delegate, to an officer,  
179 | official, or agent of the legal entity as the governing body of  
180 | the legal entity may select, the power to determine the time;  
181 | manner of sale, public or private; maturities; rate of interest,  
182 | which may be fixed or may vary at the time and in accordance  
183 | with a specified formula or method of determination; and other  
184 | terms and conditions as may be deemed appropriate by the  
185 | officer, official, or agent so designated by the governing body  
186 | of the legal entity. However, the amount and maturity of the  
187 | bonds, notes, or other obligations and the interest rate of the  
188 | bonds, notes, or other obligations must be within the limits  
189 | prescribed by the governing body of the legal entity and its  
190 | resolution delegating to an officer, official, or agent the  
191 | power to authorize the issuance and sale of the bonds, notes, or  
192 | other obligations.

193 |         9. Bonds, notes, or other obligations issued under this  
194 | paragraph may be validated as provided in chapter 75. The  
195 | complaint in any action to validate the bonds, notes, or other  
196 | obligations must be filed only in the Circuit Court for Leon  
197 | County. The notice required to be published by s. 75.06 must be  
198 | published in Leon County and in each county that is a member of  
199 | the entity issuing the bonds, notes, or other obligations, or in  
200 | which a member of the entity is located, and the complaint and



201 order of the circuit court must be served only on the State  
202 Attorney of the Second Judicial Circuit and on the state  
203 attorney of each circuit in each county that is a member of the  
204 entity issuing the bonds, notes, or other obligations or in  
205 which a member of the entity is located. Section 75.04(2) does  
206 not apply to a complaint for validation brought by the legal  
207 entity.

208 10. The accomplishment of the authorized purposes of a  
209 legal entity created under this paragraph is in all respects for  
210 the benefit of the people of the state, for the increase of  
211 their commerce and prosperity, and for the improvement of their  
212 health and living conditions. Since the legal entity will  
213 perform essential governmental functions for the public health,  
214 safety, and welfare in accomplishing its purposes, the legal  
215 entity is not required to pay any taxes or assessments of any  
216 kind whatsoever upon any property acquired or used by it for  
217 such purposes or upon any revenues at any time received by it,  
218 whether the property is within or outside the jurisdiction of  
219 members of the entity. The exemption provided in this paragraph  
220 applies regardless of whether the separate legal entity enters  
221 into agreements with private firms or entities to manage,  
222 operate, or improve the utilities owned by the separate legal  
223 entity. The bonds, notes, and other obligations of an entity,  
224 their transfer, and the income therefrom, including any profits  
225 made on the sale thereof, are at all times free from taxation of

226 any kind by the state or by any political subdivision or other  
 227 agency or instrumentality thereof. The exemption granted in this  
 228 subparagraph is not applicable to any tax imposed by chapter 220  
 229 on interest, income, or profits on debt obligations owned by  
 230 corporations.

231 Section 2. Section 367.0712, Florida Statutes, is created  
 232 to read:

233 367.0712 Alternative process to establish rate base value  
 234 of acquired system.—

235 (1) (a) When a utility acquires an existing utility system,  
 236 including a system described in s. 367.022(2), the utility may  
 237 petition the commission to establish a rate base value for the  
 238 utility system being acquired using the valuation process  
 239 described in this section instead of the system's original cost.  
 240 If the petition meets the filing requirements of subsection (3),  
 241 the commission, no later than 8 months after the date the  
 242 complete petition is filed, shall issue a final order on the  
 243 petition. The commission may grant the petition, in whole or in  
 244 part, or with modifications in the public interest, or may deny  
 245 the petition if in the public interest. The commission may not  
 246 approve a rate base value higher than that requested in the  
 247 petition.

248 (b) The rate base value established by the commission  
 249 under this section shall be used for ratemaking purposes in the  
 250 acquiring utility's next general rate case. The rate base value

251 may not exceed the lesser of the purchase price negotiated  
252 between the parties to the acquisition transaction or the  
253 average of the two appraisals conducted under subsection (2),  
254 except that it may also include reasonable transaction and  
255 closing costs incurred by the acquiring utility and reasonable  
256 fees paid to the appraisers.

257 (2) (a) For purposes of this section, the utility system  
258 being acquired must be appraised by two licensed appraisers  
259 chosen from a list established by the commission. One appraiser  
260 shall be chosen and paid by the acquiring utility and one  
261 appraiser shall be chosen and paid by the utility system being  
262 acquired. Each appraiser shall provide an appraisal of the value  
263 of the utility system being acquired consistent with the Uniform  
264 Standards of Professional Appraisal Practice.

265 (b) The acquiring utility and the utility system being  
266 acquired shall jointly retain a licensed engineer to conduct an  
267 assessment of the tangible assets of the utility system being  
268 acquired and the assessment shall be provided to the two  
269 appraisers for use in determining the value of the system.

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

273 (a) The requested rate base value for the utility system  
274 being acquired.

275 (b) Copies of the appraisals required by this section,

276 including the average of the valuations produced by each  
277 appraisal.

278 (c) A copy of the assessment of tangible assets required  
279 by this section.

280 (d) A 3-year plan to address each deficiency identified by  
281 the assessment of tangible assets required under this section.  
282 The plan must address impact on quality of service and address  
283 any planned improvements to water quality.

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

287 1. Any cost efficiencies expected to result from the  
288 transaction.

289 2. Use of this section, in lieu of the original cost  
290 method, to establish rate base.

291 (f) The contract of sale.

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

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

296 (4) Notwithstanding any provision in this section, the  
297 commission retains its authority under this chapter to set rates  
298 for the acquired utility system in future rate cases and may  
299 classify the acquired utility system as a separate entity for  
300 ratemaking purposes, if it deems it to be in the public

301 interest.

302 (5) This section applies to acquiring utilities that  
303 provide water service, wastewater service, or both to more than  
304 10,000 customers and are engaged in an arms-length acquisition  
305 of a water system, wastewater system, or both types of systems.

306 (6) The commission shall adopt rules to implement this  
307 section.

308 Section 3. This act shall take effect July 1, 2020.