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LEGISLATIVE ACTION

Senate	.	House
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Floor: WD/3R	.	
05/03/2013 03:31 PM	.	
	.	

Senator Brandes moved the following:

1 **Senate Amendment to Substitute Amendment (814240) (with**
2 **title amendment)**

3
4 Between lines 249 and 250
5 insert:

6 Section 6. Paragraph (b) of subsection (3) and paragraph
7 (g) of subsection (7) of section 163.01, Florida Statutes, are
8 amended to read:

9 163.01 Florida Interlocal Cooperation Act of 1969.—

10 (3) As used in this section:

11 (b) "Public agency" means a political subdivision, agency,
12 or officer of this state or of any state of the United States,
13 including, but not limited to, state government, county, city,



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14 school district, single and multipurpose special district,
15 single and multipurpose public authority, metropolitan or
16 consolidated government, a separate legal entity or
17 administrative entity created under subsection (7), a public
18 transit provider as defined in s. 341.031, an independently
19 elected county officer, an ~~any~~ agency of the United States
20 Government, a federally recognized Native American tribe, and
21 any similar entity of any other state of the United States.

22 (7)

23 (g)1. Notwithstanding any other provisions of this section,
24 any separate legal entity created under this section, the
25 membership of which is limited to municipalities and counties of
26 the state, and which may include a special district or a public
27 agency of this state in addition to a municipality or county or
28 both, may acquire, own, construct, improve, operate, and manage
29 public facilities, or finance facilities on behalf of any
30 person, relating to a governmental function or purpose,
31 including, but not limited to, wastewater facilities, water or
32 alternative water supply facilities, and water reuse facilities,
33 which may serve populations within or outside of the members of
34 the entity. Notwithstanding s. 367.171(7), any separate legal
35 entity created under this paragraph is not subject to Public
36 Service Commission jurisdiction. The separate legal entity may
37 not provide utility services within the service area of an
38 existing utility system unless it has received the consent of
39 the utility.

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

41 a. "Host government" means the governing body of the
42 county, if the largest number of equivalent residential



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43 connections currently served by a system of the utility is
44 located in the unincorporated area, or the governing body of a
45 municipality, if the largest number of equivalent residential
46 connections currently served by a system of the utility is
47 located within that municipality's boundaries.

48 b. "Separate legal entity" means any entity created by
49 interlocal agreement the membership of which is limited to two
50 or more special districts, municipalities, ~~or~~ or
51 public agencies of the state, but which entity is legally
52 separate and apart from any of its member governments.

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

55 d. "Utility" means a water or wastewater utility and
56 includes every person, separate legal entity, lessee, trustee,
57 or receiver owning, operating, managing, or controlling a
58 system, or proposing construction of a system, who is providing,
59 or proposes to provide, water or wastewater service to the
60 public for compensation.

61 3. A separate legal entity that seeks to acquire any
62 utility shall notify the host government in writing by certified
63 mail about the contemplated acquisition not less than 30 days
64 before any proposed transfer of ownership, use, or possession of
65 any utility assets by such separate legal entity. The potential
66 acquisition notice shall be provided to the legislative head of
67 the governing body of the host government and to its chief
68 administrative officer and shall provide the name and address of
69 a contact person for the separate legal entity and information
70 identified in s. 367.071(4)(a) concerning the contemplated
71 acquisition.



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72 4.a. Within 30 days following receipt of the notice, the
73 host government may adopt a resolution to become a member of the
74 separate legal entity, adopt a resolution to approve the utility
75 acquisition, or adopt a resolution to prohibit the utility
76 acquisition by the separate legal entity if the host government
77 determines that the proposed acquisition is not in the public
78 interest. A resolution adopted by the host government which
79 prohibits the acquisition may include conditions that would make
80 the proposal acceptable to the host government.

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

95 5. After the acquisition or construction of any utility
96 systems by a separate legal entity created under this paragraph,
97 revenues or any other income may not be transferred or paid to a
98 member of a separate legal entity, or to any other special
99 district, county, ~~or~~ municipality, or public agency of this
100 state, from user fees or other charges or revenues generated



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101 from customers that are not physically located within the
102 jurisdictional or service delivery boundaries of the member,
103 special district, county, ~~or~~ municipality, or public agency
104 receiving the transfer or payment. Any transfer or payment to a
105 member, special district, ~~or other~~ local government, or public
106 agency of this state must be solely from user fees or other
107 charges or revenues generated from customers that are physically
108 located within the jurisdictional or service delivery boundaries
109 of the member, special district, ~~or~~ local government, or public
110 agency receiving the transfer of payment.

111 6. This section is an alternative provision otherwise
112 provided by law as authorized in s. 4, Art. VIII of the State
113 Constitution for any transfer of power as a result of an
114 acquisition of a utility by a separate legal entity from a
115 municipality, county, ~~or~~ special district, or public agency of
116 this state.

117 7. The entity may finance or refinance the acquisition,
118 construction, expansion, and improvement of such facilities
119 relating to a governmental function or purpose through the
120 issuance of its bonds, notes, or other obligations under this
121 section or as otherwise authorized by law. The entity has all
122 the powers provided by the interlocal agreement under which it
123 is created or which are necessary to finance, own, operate, or
124 manage the public facility, including, without limitation, the
125 power to establish rates, charges, and fees for products or
126 services provided by it, the power to levy special assessments,
127 the power to sell or finance all or a portion of such facility,
128 and the power to contract with a public or private entity to
129 manage and operate such facilities or to provide or receive



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130 facilities, services, or products. Except as may be limited by
131 the interlocal agreement under which the entity is created, all
132 of the privileges, benefits, powers, and terms of s. 125.01,
133 relating to counties, and s. 166.021, relating to
134 municipalities, are fully applicable to the entity. However,
135 neither the entity nor any of its members on behalf of the
136 entity may exercise the power of eminent domain over the
137 facilities or property of any existing water or wastewater plant
138 utility system, nor may the entity acquire title to any water or
139 wastewater plant utility facilities, other facilities, or
140 property which was acquired by the use of eminent domain after
141 the effective date of this act. Bonds, notes, and other
142 obligations issued by the entity are issued on behalf of the
143 public agencies that are members of the entity.

144 8. Any entity created under this section may also issue
145 bond anticipation notes in connection with the authorization,
146 issuance, and sale of bonds. The bonds may be issued as serial
147 bonds or as term bonds or both. Any entity may issue capital
148 appreciation bonds or variable rate bonds. Any bonds, notes, or
149 other obligations must be authorized by resolution of the
150 governing body of the entity and bear the date or dates; mature
151 at the time or times, not exceeding 40 years from their
152 respective dates; bear interest at the rate or rates; be payable
153 at the time or times; be in the denomination; be in the form;
154 carry the registration privileges; be executed in the manner; be
155 payable from the sources and in the medium or payment and at the
156 place; and be subject to the terms of redemption, including
157 redemption prior to maturity, as the resolution may provide. If
158 any officer whose signature, or a facsimile of whose signature,



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159 appears on any bonds, notes, or other obligations ceases to be
160 an officer before the delivery of the bonds, notes, or other
161 obligations, the signature or facsimile is valid and sufficient
162 for all purposes as if he or she had remained in office until
163 the delivery. The bonds, notes, or other obligations may be sold
164 at public or private sale for such price as the governing body
165 of the entity shall determine. Pending preparation of the
166 definitive bonds, the entity may issue interim certificates,
167 which shall be exchanged for the definitive bonds. The bonds may
168 be secured by a form of credit enhancement, if any, as the
169 entity deems appropriate. The bonds may be secured by an
170 indenture of trust or trust agreement. In addition, the
171 governing body of the legal entity may delegate, to an officer,
172 official, or agent of the legal entity as the governing body of
173 the legal entity may select, the power to determine the time;
174 manner of sale, public or private; maturities; rate of interest,
175 which may be fixed or may vary at the time and in accordance
176 with a specified formula or method of determination; and other
177 terms and conditions as may be deemed appropriate by the
178 officer, official, or agent so designated by the governing body
179 of the legal entity. However, the amount and maturity of the
180 bonds, notes, or other obligations and the interest rate of the
181 bonds, notes, or other obligations must be within the limits
182 prescribed by the governing body of the legal entity and its
183 resolution delegating to an officer, official, or agent the
184 power to authorize the issuance and sale of the bonds, notes, or
185 other obligations.

186 9. Bonds, notes, or other obligations issued under this
187 paragraph may be validated as provided in chapter 75. The



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188 complaint in any action to validate the bonds, notes, or other
189 obligations must be filed only in the Circuit Court for Leon
190 County. The notice required to be published by s. 75.06 must be
191 published in Leon County and in each county that is a member of
192 the entity issuing the bonds, notes, or other obligations, or in
193 which a member of the entity is located, and the complaint and
194 order of the circuit court must be served only on the State
195 Attorney of the Second Judicial Circuit and on the state
196 attorney of each circuit in each county that is a member of the
197 entity issuing the bonds, notes, or other obligations or in
198 which a member of the entity is located. Section 75.04(2) does
199 not apply to a complaint for validation brought by the legal
200 entity.

201 10. The accomplishment of the authorized purposes of a
202 legal entity created under this paragraph is in all respects for
203 the benefit of the people of the state, for the increase of
204 their commerce and prosperity, and for the improvement of their
205 health and living conditions. Since the legal entity will
206 perform essential governmental functions in accomplishing its
207 purposes, the legal entity is not required to pay any taxes or
208 assessments of any kind whatsoever upon any property acquired or
209 used by it for such purposes or upon any revenues at any time
210 received by it. The bonds, notes, and other obligations of an
211 entity, their transfer, and the income therefrom, including any
212 profits made on the sale thereof, are at all times free from
213 taxation of any kind by the state or by any political
214 subdivision or other agency or instrumentality thereof. The
215 exemption granted in this subparagraph is not applicable to any
216 tax imposed by chapter 220 on interest, income, or profits on



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217 debt obligations owned by corporations.

218

219 ===== T I T L E A M E N D M E N T =====

220 And the title is amended as follows:

221 Delete line 3177

222 and insert:

223 circumstances; amending s. 163.01, F.S.; modifying the
224 definition of "public agency" to include a public
225 transit provider; providing that a public agency of
226 this state may have membership in a separate legal
227 entity created under the Florida Interlocal
228 Cooperation Act of 1969; amending s. 316.515, F.S.;
229 providing