



CHAMBER ACTION

The Committee on Business Regulation recommends the following:

Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Florida Interlocal Cooperation Act of 1969; amending s. 163.01, F.S.; providing procedures for the approval of the transfer of powers between local governments and a legal entity for the acquisition of water or wastewater facilities serving residents outside the jurisdiction of the members of the legal entity; providing for alternative compliance with s. 4, Art. VIII of the State Constitution; declaring a legal entity a government authority under certain circumstances; requiring a county to reserve the power to review and approve rates under certain circumstances; prohibiting a legal entity from receiving income generated from customers under certain circumstances; granting a county the right to acquire facilities of a legal entity serving residents outside the jurisdiction of the members of the legal entity under certain circumstances; providing for retroactive application; providing an effective date.



HB 0129

2003
CS

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

30

31 Section 1. Paragraph (g) of subsection (7) of section
32 163.01, Florida Statutes, is amended to read:

33 163.01 Florida Interlocal Cooperation Act of 1969.--
34 (7)

35 (g)1. Notwithstanding any other provisions of this
36 section, any separate legal entity created under this section,
37 the membership of which is limited to municipalities and
38 counties of the state, may acquire, own, construct, improve,
39 operate, and manage public facilities, or finance facilities on
40 behalf of any person, relating to a governmental function or
41 purpose, including, but not limited to, wastewater facilities,
42 water or alternative water supply facilities, and water reuse
43 facilities, which may serve populations within or outside of the
44 members of the entity. Notwithstanding s. 367.171(7), any
45 separate legal entity created under this paragraph is not
46 subject to commission jurisdiction and may not provide utility
47 services within the service area of an existing utility system
48 unless it has received the consent of the utility. A separate
49 legal entity, other than a water supply authority created
50 pursuant to ss. 373.1962 and 373.1963, which seeks to acquire
51 any public facilities that serve populations outside of the
52 jurisdiction of members of the entity must notify in writing
53 each host government of the contemplated acquisition prior to
54 any transfer of ownership, use, or possession of any utility
55 assets to such separate legal entity. The potential acquisition
56 notice must be provided in writing to the legislative head of



HB 0129

2003
CS

57 | the governing body of the host government and its chief
58 | administrative officer and provide the name and address of a
59 | contact person of the separate legal entity for the receipt of
60 | information on the contemplated acquisition. Within 45 days
61 | following receipt of the notice, the host government may adopt a
62 | membership resolution indicating its intent to become a member
63 | of the separate legal entity, a prohibition resolution to
64 | prohibit the acquisition by the separate legal entity of public
65 | facilities within its jurisdiction, an approval resolution
66 | prescribing any restrictions on the proposed acquisition
67 | required by the host local government, or take no action of any
68 | kind. If a host government adopts a membership resolution, the
69 | separate legal entity shall accept the host government as a
70 | member prior to any transfer of ownership, use, or possession of
71 | the public facilities on the same basis as its existing members.
72 | If a host government adopts a prohibition resolution, the
73 | separate legal entity may not acquire the public facilities
74 | within such host government's territory without specific consent
75 | of the host government by future resolution. For purposes of
76 | this paragraph, a "host government" is the governing body of the
77 | county if a majority of the retail utility customers to be
78 | served by the acquired public facilities within the county
79 | reside in the unincorporated area or is the governing body of a
80 | municipality if the majority of the retail utility customers to
81 | be served by the acquired public facilities reside within the
82 | municipal boundaries. A host government shall, in its adoption
83 | of an approval resolution or a membership resolution or by a
84 | resolution adopted subsequent to the closing of an acquisition,



HB 0129

2003
CS

85 reserve the right to review and approve as fair and reasonable
86 the rates, charges, and customer classifications adopted by the
87 separate legal entity for the use of the acquired public
88 facilities within the jurisdiction of the host local government.
89 Such right of rate review and approval by the host local
90 government is subject to the obligation of the separate legal
91 entity to establish rates and charges that comply with the
92 requirements contained in any resolution or trust agreement
93 relating to the issuance of bonds to acquire and improve the
94 affected public facilities and such right does not affect the
95 obligation of the separate legal entity to set rates at a level
96 sufficient to pay debt service on its obligations issued in
97 relation to the affected public facilities. A separate legal
98 entity created under this section shall be a governmental
99 authority for purposes of chapter 367. This paragraph is an
100 alternative provision otherwise provided by law as authorized in
101 s. 4, Art. VIII of the State Constitution for any transfer of
102 power as a result of an acquisition of public facilities by a
103 separate legal entity from a municipality, county, or special
104 district. The entity may finance or refinance the acquisition,
105 construction, expansion, and improvement of such facilities
106 relating to a governmental function or purpose through the
107 issuance of its bonds, notes, or other obligations under this
108 section or as otherwise authorized by law. The entity has all
109 the powers provided by the interlocal agreement under which it
110 is created or which are necessary to finance, own, operate, or
111 manage the public facility, including, without limitation, the
112 power to establish rates, charges, and fees for products or



HB 0129

2003
CS

113 services provided by it, the power to levy special assessments,
114 the power to sell or finance all or a portion of such facility,
115 and the power to contract with a public or private entity to
116 manage and operate such facilities or to provide or receive
117 facilities, services, or products. Except as may be limited by
118 the interlocal agreement under which the entity is created, all
119 of the privileges, benefits, powers, and terms of s. 125.01,
120 relating to counties, and s. 166.021, relating to
121 municipalities, are fully applicable to the entity. However,
122 neither the entity nor any of its members on behalf of the
123 entity may exercise the power of eminent domain over the
124 facilities or property of any existing water or wastewater plant
125 utility system, nor may the entity acquire title to any water or
126 wastewater plant utility facilities, other facilities, or
127 property which was acquired by the use of eminent domain after
128 the effective date of this act. Bonds, notes, and other
129 obligations issued by the entity are issued on behalf of the
130 public agencies that are members of the entity.

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



HB 0129

2003
CS

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



HB 0129

2003
CS

169 prescribed by the governing body of the legal entity and its
170 resolution delegating to an officer, official, or agent the
171 power to authorize the issuance and sale of the bonds, notes, or
172 other obligations.

173 3. Bonds, notes, or other obligations issued under
174 subparagraph 1. may be validated as provided in chapter 75. The
175 complaint in any action to validate the bonds, notes, or other
176 obligations must be filed only in the Circuit Court for Leon
177 County. The notice required to be published by s. 75.06 must be
178 published in Leon County and in each county that is a member of
179 the entity issuing the bonds, notes, or other obligations, or in
180 which a member of the entity is located, and the complaint and
181 order of the circuit court must be served only on the State
182 Attorney of the Second Judicial Circuit and on the state
183 attorney of each circuit in each county that is a member of the
184 entity issuing the bonds, notes, or other obligations or in
185 which a member of the entity is located. Section 75.04(2) does
186 not apply to a complaint for validation brought by the legal
187 entity.

188 4. The accomplishment of the authorized purposes of a
189 legal entity created under this paragraph is in all respects for
190 the benefit of the people of the state, for the increase of
191 their commerce and prosperity, and for the improvement of their
192 health and living conditions. Since the legal entity will
193 perform essential governmental functions in accomplishing its
194 purposes, the legal entity is not required to pay any taxes or
195 assessments of any kind whatsoever upon any property acquired or
196 used by it for such purposes or upon any revenues at any time



HB 0129

2003
CS

197 received by it. The bonds, notes, and other obligations of an
198 entity, their transfer and the income therefrom, including any
199 profits made on the sale thereof, are at all times free from
200 taxation of any kind by the state or by any political
201 subdivision or other agency or instrumentality thereof. The
202 exemption granted in this subparagraph is not applicable to any
203 tax imposed by chapter 220 on interest, income, or profits on
204 debt obligations owned by corporations.

205 5. Subsequent to the acquisition or construction of any
206 wastewater facilities, water or alternative water supply
207 facilities, or water reuse facilities by a separate legal entity
208 created pursuant to this subsection, revenues or other income of
209 any description may not be transferred or paid to a member of a
210 separate legal entity or to any other county or municipality
211 from user fees or other charges or revenues generated from
212 customers not physically located within the jurisdictional or
213 service delivery boundaries of the member or the county or
214 municipality receiving the transfer or payment. Any transfer or
215 payment to a member or other local government shall be solely
216 from user fees or other charges or revenue generated from
217 customers physically located within the jurisdictional or
218 service delivery boundaries of the member or the local
219 government receiving the transfer or payment.

220 6. The host government is guaranteed the right to acquire
221 any utility within its boundaries owned by the separate legal
222 entity. The separate legal entity shall sell and transfer a
223 utility to a host government for an amount equal to any
224 outstanding indebtedness associated with the utility to be sold



HB 0129

2003
CS

225 and transferred or an amount determined pursuant to any
226 resolution, trust agreement, or other financing document plus
227 the reasonable transaction costs incurred by the separate legal
228 entity to complete the sale and transfer.

229 Section 2. The acquisition requirements contained in the
230 amendment to s. 163.01(7)(g)1., Florida Statutes, provided in
231 this act which condition the acquisition by a separate legal
232 entity of public facilities that serve populations outside of
233 the members of the entity on the provision by such separate
234 legal entity of a potential acquisition notice to all host
235 governments, as defined in s. 163.01(7)(g)1., Florida Statutes,
236 and on the granting to a host government the opportunity to
237 adopt a membership resolution, a prohibition resolution, or an
238 approval resolution shall be retroactively applied and
239 substantial compliance with such acquisition requirements shall
240 be a specific condition of any acquisition subsequent to
241 September 1, 2002, of public facilities by a separate legal
242 entity created by interlocal agreement pursuant to s.
243 163.01(7)(g)1., Florida Statutes, pursuant to an acquisition
244 agreement entered into prior or subsequent to September 1, 2002.

245 Section 3. This act shall take effect upon becoming a law
246 and shall apply retroactively to September 1, 2002.