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LEGISLATIVE ACTION

Senate

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House

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Floor: 2/AD/2R

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04/26/2021 03:06 PM

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Senator Hutson moved the following:

Senate Amendment (with title amendment)

Before line 10

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



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12 the state, and which may include a special district in addition
13 to a municipality or county or both, may acquire, own,
14 construct, improve, operate, and manage public facilities, or
15 finance facilities on behalf of any person, relating to a
16 governmental function or purpose, including, but not limited to,
17 wastewater facilities, water or alternative water supply
18 facilities, and water reuse facilities, which may serve
19 populations within or outside of the members of the entity.
20 Notwithstanding s. 367.171(7), any separate legal entity created
21 under this paragraph is not subject to Public Service Commission
22 jurisdiction. The separate legal entity may not provide utility
23 services within the service area of an existing utility system
24 unless it has received the consent of the utility.

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

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

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

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

40 d. "Utility" means a water or wastewater utility and



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

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

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

66 b. If a host government adopts a membership resolution, the
67 separate legal entity shall accept the host government as a
68 member on the same basis as its existing members before any
69 transfer of ownership, use, or possession of the utility or the



70 utility facilities. If a host government adopts a resolution to
71 approve the utility acquisition, the separate legal entity may
72 complete the acquisition. If a host government adopts a
73 prohibition resolution, the separate legal entity may not
74 acquire the utility within that host government's territory
75 without the specific consent of the host government by future
76 resolution. If a host government does not adopt a prohibition
77 resolution or an approval resolution, the separate legal entity
78 may proceed to acquire the utility after the 30-day notice
79 period without further notice.

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

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



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99 municipality, county, or special district.

100 7. The entity may finance or refinance the acquisition,
101 construction, expansion, and improvement of such facilities
102 relating to a governmental function or purpose through the
103 issuance of its bonds, notes, or other obligations under this
104 section or as otherwise authorized by law. The entity has all
105 the powers provided by the interlocal agreement under which it
106 is created or which are necessary to finance, own, operate, or
107 manage the public facility, including, without limitation, the
108 power to establish rates, charges, and fees for products or
109 services provided by it, the power to levy special assessments,
110 the power to sell or finance all or a portion of such facility,
111 and the power to contract with a public or private entity to
112 manage and operate such facilities or to provide or receive
113 facilities, services, or products. Except as may be limited by
114 the interlocal agreement under which the entity is created, all
115 of the privileges, benefits, powers, and terms of s. 125.01,
116 relating to counties, and s. 166.021, relating to
117 municipalities, are fully applicable to the entity. However,
118 neither the entity nor any of its members on behalf of the
119 entity may exercise the power of eminent domain over the
120 facilities or property of any existing water or wastewater plant
121 utility system, nor may the entity acquire title to any water or
122 wastewater plant utility facilities, other facilities, or
123 property which was acquired by the use of eminent domain after
124 the effective date of this act, unless 10 or more years have
125 elapsed since the date of the acquisition by eminent domain.
126 Bonds, notes, and other obligations issued by the entity are
127 issued on behalf of the public agencies that are members of the



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128 entity.

129 8. Any entity created under this section may also issue
130 bond anticipation notes in connection with the authorization,
131 issuance, and sale of bonds. The bonds may be issued as serial
132 bonds or as term bonds or both. Any entity may issue capital
133 appreciation bonds or variable rate bonds. Any bonds, notes, or
134 other obligations must be authorized by resolution of the
135 governing body of the entity and bear the date or dates; mature
136 at the time or times, not exceeding 40 years from their
137 respective dates; bear interest at the rate or rates; be payable
138 at the time or times; be in the denomination; be in the form;
139 carry the registration privileges; be executed in the manner; be
140 payable from the sources and in the medium or payment and at the
141 place; and be subject to the terms of redemption, including
142 redemption prior to maturity, as the resolution may provide. If
143 any officer whose signature, or a facsimile of whose signature,
144 appears on any bonds, notes, or other obligations ceases to be
145 an officer before the delivery of the bonds, notes, or other
146 obligations, the signature or facsimile is valid and sufficient
147 for all purposes as if he or she had remained in office until
148 the delivery. The bonds, notes, or other obligations may be sold
149 at public or private sale for such price as the governing body
150 of the entity shall determine. Pending preparation of the
151 definitive bonds, the entity may issue interim certificates,
152 which shall be exchanged for the definitive bonds. The bonds may
153 be secured by a form of credit enhancement, if any, as the
154 entity deems appropriate. The bonds may be secured by an
155 indenture of trust or trust agreement. In addition, the
156 governing body of the legal entity may delegate, to an officer,



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157 official, or agent of the legal entity as the governing body of
158 the legal entity may select, the power to determine the time;
159 manner of sale, public or private; maturities; rate of interest,
160 which may be fixed or may vary at the time and in accordance
161 with a specified formula or method of determination; and other
162 terms and conditions as may be deemed appropriate by the
163 officer, official, or agent so designated by the governing body
164 of the legal entity. However, the amount and maturity of the
165 bonds, notes, or other obligations and the interest rate of the
166 bonds, notes, or other obligations must be within the limits
167 prescribed by the governing body of the legal entity and its
168 resolution delegating to an officer, official, or agent the
169 power to authorize the issuance and sale of the bonds, notes, or
170 other obligations.

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



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

209
210 ===== T I T L E A M E N D M E N T =====

211 And the title is amended as follows:

212 Between lines 2 and 3

213 insert:

214 amending s. 163.01, F.S.; providing an exception to a



215 prohibition against legal entities and their members
216 exercising the power of eminent domain over or
217 acquiring title to certain facilities or property;