

Committee Substitute for Senate Bill No. 1922

An act relating to water and wastewater utilities; amending s. 163.01, F.S.; revising provisions for a separate legal entity to acquire, own, construct, improve, operate, and manage or finance certain public facilities; defining terms; requiring certain notice to host government by the separate legal entity that seeks to acquire any utility; providing procedures for the host government to accept or reject the proposal; requiring the separate legal entity to accept the host government as a member upon adoption of a membership resolution by the host government; providing for the separate legal entity to proceed with the acquisition if the host government does not act; requiring any transfer or payment by the separate legal entity to a member or other local government to be solely from user fees or other charges or revenues generated from customers that are physically located within the jurisdictional or service delivery boundaries of the member or local government receiving the transfer or payment; creating s. 367.0813, F.S.; clarifying state policy that specifies that gains or losses from a purchase or condemnation of a utility's assets which result in the loss of customers served by such assets and the associated future revenue streams shall be borne by the shareholders of the utility; providing for severability; providing for application; amending s. 367.145, F.S., requiring large water and wastewater utilities to pay regulatory assessment fees semiannually; requiring small utilities with revenues less than a certain amount to pay annually; providing an effective date.

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

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 ~~and~~ 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 located in the unincorporated area, or the governing body of a municipality, if the largest number of equivalent residential connections currently served by a system of the utility is located within that municipality’s boundaries.

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

c. “System” means a water or wastewater facility or group of such facilities owned by one entity or affiliate entities.

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

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

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

b. If a host government adopts a membership resolution, the separate legal entity shall accept the host government as a member on the same basis as its existing members before any transfer of ownership, use, or possession of the utility or the utility facilities. If a host government adopts a resolution to approve the utility acquisition, the separate legal entity may complete the acquisition. If a host government adopts a prohibition resolution, the separate legal entity may not acquire the utility within that host government’s territory without the specific consent of the host government by future resolution. If a host government does not adopt a prohibition resolution or an approval resolution, the separate legal entity may proceed to acquire the utility after the 30-day notice period without further notice.

5. After the acquisition or construction of any utility systems by a separate legal entity created under this paragraph revenues or any other income may not be transferred or paid to a member of a separate legal entity, or to any other special district, county, or municipality, from user fees or other charges or revenues generated from customers that are not physically located within the jurisdictional or service delivery boundaries of the member, special district, county, or municipality receiving the transfer or payment. Any transfer or payment to a member, special district, or other local government must be solely from user fees or other charges or revenues generated from customers that are physically located within the jurisdictional or service delivery boundaries of the member, special district, or local government receiving the transfer of payment.

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

7. The entity may finance or refinance the acquisition, construction, expansion, and improvement of such facilities relating to a governmental function or purpose through the issuance of its bonds, notes, or other obligations under this section or as otherwise authorized by law. The entity has all the powers provided by the interlocal agreement under which it is created or which are necessary to finance, own, operate, or manage the public facility, including, without limitation, the power to establish rates, charges, and fees for products or services provided by it, the power to levy special assessments, the power to sell or finance all or a portion of such facility, and the power to contract with a public or private entity to manage and operate such facilities or to provide or receive facilities, services, or products. Except as may be limited by the interlocal agreement under which the entity is created, all of the privileges, benefits, powers, and terms of s. 125.01, relating to counties, and s. 166.021, relating to municipalities, are fully applicable to the entity. However, neither the entity nor any of its members on behalf of the entity may exercise the power of eminent domain over the facilities or property of any existing water or wastewater plant utility system, nor may the entity acquire title to any water or wastewater plant utility facilities, other facilities, or property which was acquired by the use of eminent domain after the effective date of this act. Bonds, notes, and other obligations issued by the entity are issued on behalf of the public agencies that are members of the entity.

8.2. Any entity created under this section may also issue bond anticipation notes in connection with the authorization, issuance, and sale of bonds. The bonds may be issued as serial bonds or as term bonds or both. Any entity may issue capital appreciation bonds or variable rate bonds. Any bonds, notes, or other obligations must be authorized by resolution of the governing body of the entity and bear the date or dates; mature at the time or times, not exceeding 40 years from their respective dates; bear interest at the rate or rates; be payable at the time or times; be in the denomination; be in the form; carry the registration privileges; be executed in the manner; be payable from the sources and in the medium or payment and at the place; and

be subject to the terms of redemption, including redemption prior to maturity, as the resolution may provide. If any officer whose signature, or a facsimile of whose signature, appears on any bonds, notes, or other obligations ceases to be an officer before the delivery of the bonds, notes, or other obligations, the signature or facsimile is valid and sufficient for all purposes as if he or she had remained in office until the delivery. The bonds, notes, or other obligations may be sold at public or private sale for such price as the governing body of the entity shall determine. Pending preparation of the definitive bonds, the entity may issue interim certificates, which shall be exchanged for the definitive bonds. The bonds may be secured by a form of credit enhancement, if any, as the entity deems appropriate. The bonds may be secured by an indenture of trust or trust agreement. In addition, the governing body of the legal entity may delegate, to an officer, official, or agent of the legal entity as the governing body of the legal entity may select, the power to determine the time; manner of sale, public or private; maturities; rate of interest, which may be fixed or may vary at the time and in accordance with a specified formula or method of determination; and other terms and conditions as may be deemed appropriate by the officer, official, or agent so designated by the governing body of the legal entity. However, the amount and maturity of the bonds, notes, or other obligations and the interest rate of the bonds, notes, or other obligations must be within the limits prescribed by the governing body of the legal entity and its resolution delegating to an officer, official, or agent the power to authorize the issuance and sale of the bonds, notes, or other obligations.

9.3. Bonds, notes, or other obligations issued under this paragraph ~~subparagraph 1.~~ may be validated as provided in chapter 75. The complaint in any action to validate the bonds, notes, or other obligations must be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 must be published in Leon County and in each county that is a member of the entity issuing the bonds, notes, or other obligations, or in which a member of the entity is located, and the complaint and order of the circuit court must be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in each county that is a member of the entity issuing the bonds, notes, or other obligations or in which a member of the entity is located. Section 75.04(2) does not apply to a complaint for validation brought by the legal entity.

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

Section 2. Section 367.0813, Florida Statutes, is created to read:

367.0813 Gain or loss on purchase or condemnation by governmental authority.—In order to provide appropriate incentives to encourage the private sector to participate in the investment in water and wastewater infrastructure, to protect private sector property rights of a utility's shareholders, and to avoid an additional burden of costs placed on ratepayers by relitigating this issue, the Legislature affirms and clarifies the clear policy of this state that gains or losses from a purchase or condemnation of a utility's assets which results in the loss of customers served by such assets and the associated future revenue streams shall be borne by the shareholders of the utility. This section applies to all transactions prior to and after the effective date of this section.

Section 3. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 4. Subsection (1) of section 367.145, Florida Statutes, is amended to read:

367.145 Regulatory assessment and application fees.—

(1) The commission shall set by rule a regulatory assessment fee that each utility must pay in accordance with s. 350.113(3); however, each small utility with annual revenues of less than \$200,000 shall pay once a year in conjunction with filing its annual financial report required by commission rule. Notwithstanding any provision of law to the contrary, the amount of the regulatory assessment fee shall not exceed 4.5 percent of the gross revenues of the utility derived from intrastate business, excluding sales for resale made to a regulated company.

(a) A governmental authority to which ownership or control of a utility is transferred is not liable for any fees owed the commission by the utility as of the date of transfer. However, whenever a purchase at wholesale is made of any water or wastewater service and a fee is paid or payable thereon by the selling utility and the utility purchasing such water or wastewater service resells the same directly to customers, the purchasing utility is entitled to, and must receive, credit on such fees as may be due by it under this section to the extent of the fee paid or payable upon such water or wastewater service by the utility from which such purchase was made. All such fee payments and penalties must be deposited in accordance with s. 350.113.

(b) In addition to the penalties and interest otherwise provided, the commission may impose a penalty upon a utility for failure to pay regulatory assessment fees in a timely manner in accordance with s. 367.161.

Section 5. This act shall take effect upon becoming a law and shall apply to all contracts pending on or after that date.

Approved by the Governor June 18, 2004.

Filed in Office Secretary of State June 18, 2004.