1982

Session Law 82-053

Florida Senate & House of Representatives

Follow this and additional works at: https://ir.law.fsu.edu/staff-analysis

Part of the Legislation Commons

Recommended Citation

House of Representatives, Florida Senate &, "Session Law 82-053" (1982). Staff Analysis. 323.
https://ir.law.fsu.edu/staff-analysis/323

This Article is brought to you for free and open access by the Florida Legislative Documents at Scholarship Repository. It has been accepted for inclusion in Staff Analysis by an authorized administrator of Scholarship Repository. For more information, please contact efarrell@law.fsu.edu.
<table>
<thead>
<tr>
<th>Year</th>
<th>Session</th>
<th>Law No.</th>
<th>LOF Cite</th>
<th>#pp</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>I</td>
<td>82-53</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Prime Bill#</th>
<th>Sponsor</th>
<th>Comp./Sim. Bills</th>
<th>#pp</th>
</tr>
</thead>
<tbody>
<tr>
<td>HB. 765</td>
<td></td>
<td>58 250</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>JLMC Hist. Lea. Cites</th>
<th>Senate Bills</th>
<th>House Bills</th>
<th>#pp</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Committee of Ref. Senate</th>
<th>House</th>
<th>Previous versions?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commerce, Gov., (led) ECA</td>
<td>Energy (also by Leg &amp; Ind. - one subject file)</td>
<td></td>
</tr>
</tbody>
</table>

### Committee Records

<table>
<thead>
<tr>
<th>H/S Committee</th>
<th>Year</th>
<th>Record Series: Folder Title, etc.</th>
<th>Location Cite</th>
<th>#pp</th>
</tr>
</thead>
<tbody>
<tr>
<td>H Energy</td>
<td>1982</td>
<td>Hearings</td>
<td>19/735</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bill file: HB 765</td>
<td>19/740</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Meeting file (from Jan 1982)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>S Commerce</td>
<td>1982</td>
<td>Meeting file</td>
<td>18/112.9</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Bill file: 58 250 (bill file 28 51)</td>
<td>18/112</td>
<td></td>
</tr>
</tbody>
</table>

### Senate/House Journals

<table>
<thead>
<tr>
<th>Page</th>
<th>Date</th>
<th>#pp</th>
<th>Page</th>
<th>Date</th>
<th>#pp</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Tape Recordings

<table>
<thead>
<tr>
<th>H/S Floor</th>
<th>Committee/subcommittee</th>
<th>Date</th>
<th># Tapes</th>
<th>Location Cite</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Other Documentation

<table>
<thead>
<tr>
<th>Record series title, folder title, etc.</th>
<th>Location Cite</th>
<th>#pp</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

**LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT**

**Year:** 1982  
**Session:** I  
**Law No.:** 82-53  
**COMP. SIM. BILLS:** 58 250  
**JLMC HIST. LEA. CITES:** 299  
**COMMITTEE OF REF.:** Senate Commerce, Gov., (led) ECA  
**HISTORY:** Energy (also by Leg & Ind. - one subject file)  
**COMMITTEE RECORDS:**  
**H/S COMMITTEE:** H Energy  
**YEAR:** 1982  
**RECORD SERIES: FOLDER TITLE, ETC.:** Hearings  
**LOCATION CITE:** 19/735  
**TAPES:**  
**OTHER DOCUMENTATION:**
A bill to be entitled
An act relating to electric power; adding
paragraphs (d), (e), (f), and (g) to s.
163.01(3), Florida Statutes, amending paragraph
(c) of subsection (7) thereof, and adding
subsection (15) thereto, defining the terms
"electric project," "person," "electric
utility," and "foreign public utility" with
respect to the Florida Interlocal Cooperation
Act of 1969; providing for the issuance of
bonds by any separate legal entity created
pursuant to said act whose membership is
comprised only of electric utilities; providing
certain additional powers and waiving certain
rights of sovereign immunity with respect to
certain entities which exercise or propose to
exercise the powers granted pursuant to part II
of chapter 361, Florida Statutes, the Joint
Power Act; creating s. 361.09, Florida
Statutes, relating to the valuation of electric
utility property subject to eminent domain;
adding subsections (3) and (4) to s. 361.11,
Florida Statutes, defining the terms "person"
and "foreign public utility" for the purposes
of the Joint Power Act; amending s. 361.12,
Florida Statutes, relating to joint electric
power supply projects, describing entities
which may participate in joint projects;
amending s. 361.13, Florida Statutes, relating
to powers of electric utilities and other
organizations; amending s. 361.14, Florida

CODING: Words in噙单 through type are deletions from existing law; words underline are additions.
Statutes, relating to limitations on sales with respect to joint project energy; providing for the additional powers and authority granted in this act to apply to certain preexisting agreements; providing a statement of purpose; providing for severability; providing an effective date.

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

Section 1. Paragraphs (d), (e), (f), and (g) are added to subsection (3) of section 163.01, Florida Statutes, paragraph (c) of subsection (7) of said section is amended, and subsection (15) is added to said section, to read:

163.01 Florida Interlocal Cooperation Act of 1969.--

(3) As used in this section:

(d) "Electric project" means:

1. Any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, located within or without the state, used or useful in the generation, production, transmission, purchase, sale, exchange, or interchange of electric capacity and energy, including facilities and property for the acquisition, extraction, conversion, transportation, storage, reprocessing, or disposal of fuel and other materials of any kind for any such purposes.

2. Any interest in, or right to the use, services, output, or capacity of any such plant, works, system, or facilities.

3. Any study to determine the feasibility or costs of any of the foregoing, including, but not limited to,

(e) "Person" means:

1. Any natural person;

2. The United States, any state, any municipality, political subdivision, municipal corporation created by or pursuant to the laws of the United States or any state, or any board, corporation, or other entity or body declared by or pursuant to the laws of the United States or any state to be a department, agency, or instrumentality of any thereof;

3. Any corporation, not-for-profit corporation, firm, partnership, cooperative association, electric cooperative, or business trust of any nature whatsoever organized and existing under the laws of the United States or any state; or

4. Any foreign country, any political subdivision or governmental unit of any foreign country, or any corporation, not-for-profit corporation, firm, partnership, cooperative association, electric cooperative, or business trust of any nature whatsoever organized and existing under the laws of any foreign country or of any political subdivision or governmental unit thereof.

(f) "Electric utility" shall have the same meaning as in s. 361.11(2).

(g) "Foreign public utility" means any person as defined in paragraph (e), whose principal location or principal place of business is not located within this state, which owns, maintains, or operates facilities for the generation, transmission, or distribution of electric energy, and which supplies electricity to retail or wholesale engineering, legal, financial, and other services necessary or appropriate to determining the legality and financial and engineering feasibility of any project referred to in subparagraph 1: or subparagraph 2.
customers, or both, on a continuous, reliable, and dependable basis, or any affiliate or subsidiary of such person, the business of which is limited to the generation or transmission, or both, of electric energy and activities reasonably incidental thereto.

(7)

(c) No separate legal or administrative entity created by an interlocal agreement shall possess the power or authority to levy any type of tax within the boundaries of any governmental unit participating in the interlocal agreement, to issue any type of bond in its own name, or in any way to obligate financially a governmental unit participating in the interlocal agreement. However, any separate legal entity whose membership shall consist only of electric utilities as defined in s. 361.11(2), which is and created for the purpose of exercising the powers granted by part II of chapter 361, the "Joint Power Act," may, for the purpose of financing or refinancing the costs of a joint electric power supply project as defined in said part, exercise all powers in connection with the authorization, issuance, and sale of bonds as are conferred upon municipalities by parts I, II, and III part I of chapter 159 or part III of chapter 166, or both. Any such entity may also issue bond anticipation notes, as provided by s. 215.431, in connection with the authorization, issuance, and sale of such bonds. All of the privileges, benefits, powers, and terms of parts I, II, and III part I of chapter 159 and part III of chapter 166, notwithstanding any limitations provided above, shall be fully applicable to such entity. In addition, the governing body of such legal entity may also authorize bonds to be issued and sold from time to time and delegate, to such officer, official, or agent of such legal entity as the governing body of such legal entity shall select, the power to determine the time, manner of sale, public or private, maturities, rate and rates of interest, which may be fixed or may vary at such time or times 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 such legal entity.

However, the amounts and maturities of and interest rate and rates on such bonds shall be within the limits prescribed by the governing body of such legal entity in its resolution delegating to such officer, official, or agent the power to authorize the issuance and sale of such bonds. Bonds issued pursuant to this section may be validated as provided in chapter 75 and subsection (15)(e). However, the complaint in any action to validate such bonds shall be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 shall be published only in Leon County, and the complaint and order of the circuit court shall be served only on the State Attorney of the Second Judicial Circuit and on the State Attorney of each circuit in which a public agency municipality participating in the electric project subject bond issue lies. Notice of such proceedings shall be published in the manner and at the time required by s. 75.06, in Leon County and in each county in which any portion of any public agency participating in the electric project lies.

(15) Notwithstanding any other provision of this section or of any other law except s. 361.14, any public agency of this state which is an electric utility, or any separate legal entity created pursuant to the provisions of
this section, whose membership shall consist only of electric
utilities, which exercises or proposes to exercise the powers
granted by part II of chapter 361, the "Joint Power Act," may
exercise any or all of the following powers:

(a) Any such public agency, legal entity, or both, may
plan, finance, acquire, construct, reconstruct, own, lease,
operate, maintain, repair, improve, extend, or otherwise
participate jointly in one or more electric projects,
proposed, existing, or under construction, located or to be
located within or without this state with any one or more of
the following: Any such legal entity; one or more electric
utilities; one or more foreign public utilities; or any other
person, if the right to full possession and to all of the use,
services, output, and capacity of any such electric project
during the original estimated useful life thereof is vested,
subject to creditors' rights, in any one or more of any such
legal entities, in any one or more electric utilities, in any
one or more foreign public utilities, or any
combination thereof, such public agency, legal entity, or
both, may enter into an agreement or agreements with respect
to such electric project with the other person or persons
participating therein, and such legal entity may enter into an
agreement or agreements with one or more public agencies who
are parties to the interlocal agreement creating such legal
entity, and any such agreement may be for such period,
including, but not limited to, an unspecified period, and
contain such other terms, conditions, and provisions
consistent with the provisions of this section as the parties
thereto shall determine. In connection with entry into and
performance pursuant to any such agreement, the selection of
any person or persons with which any such public agency, legal
entity, or both, may enter into any such agreement, and the
selection of any electric project to which such agreement may
relate, no such public agency or legal entity shall be
required to comply with any statute, general, local, or
special, or with any charter provision of any public agency,
which would otherwise require public bidding, competitive
negotiation, or both, including, but not limited to, the
provisions of s. 287.055. Any such agreement may include, but
need not be limited to, any or all of the following:

1. Provisions defining what constitutes a default
thereunder and providing for the rights and remedies of the
parties thereto upon the occurrence of such a default.

CODING: Words in italics through type are deletions from existing law; words underlined are additions.
including, without limitation, the right to discontinue the
delivery of products or services to a defaulting party and
requirements that the remaining parties not in default who are
entitled to receive products or services from the same
electric project may be required to pay for and use or
otherwise dispose of, on a proportionate or other basis, all
or some portion of the products and services which were to be
purchased by the defaulting party;

2. Provisions granting one or more of the parties the
option to purchase the interest or interests of one or more
other parties in the electric project upon such occurrences,
at such times and pursuant to such terms and conditions as the
parties may agree, notwithstanding the limitations on options
in the provisions of s. 689.22, the common law rule against
perpetuities, or any other law to the contrary;

3. Provisions setting forth restraints on alienation
of the interests of the parties in the electric project;

4. Provisions for the planning, design, engineering,
licensing, acquisition, construction, completion, management,
control, operation, maintenance, repair, renewal, addition,
replacement, improvement, modification, decommissioning,
decommissioning, clean-up, retirement, disposal, or all of the
foregoing of such electric project by any one or more of the
parties to such agreement, which party or parties may be
designated in or pursuant to such agreement as agent or agents
on behalf of itself and one or more of the other parties
thereto or by such other means as may be determined by the
parties thereto;

5. Provisions for a method or methods of determining
and allocating among or between the parties the costs of
planning, design, engineering, licensing, acquisition,
Perform punctually any specified covenant or obligation contained in or undertaken pursuant to any such agreement, any one or more parties to such agreement or any one or more persons who has been designated in such agreement as a third party beneficiary of such covenant or obligation may enforce such public agency's or legal entity's performance by an action at law or in equity, including, but not limited to, specific performance or mandamus;

9. Provisions obligating any such public agency, legal entity, or both, to indemnify, including, without limitation, indemnification against the imposition or collection of local, state, or federal taxes and interest or penalties related thereto, or payments made in lieu thereof, hold harmless, or waive claims or rights for recovery, including claims or rights for recovery based on sole negligence, gross negligence, or any other type of negligence, or any other act or omission, intentional or otherwise, against one or more of the other parties to such agreement, and such provisions may define the class or classes of persons for whose acts, intentional or otherwise, a party shall not be responsible, and all of such provisions may be upon such terms and conditions as the parties thereto shall determine;

10. Provisions obligating any such legal entity, public agency, or both, not to dissolve until all principal and interest payments for all bonds and other evidences of indebtedness issued by such legal entity, public agency, or both, have been paid or otherwise provided for and until all contractual obligations and duties of such legal entity and such public agencies have been fully performed, discharged, or both;

CODING: Words in square through type are deletions from existing law; words underlined are additions.

11. Provisions obligating any such public agency, legal entity, or both, to establish, levy, and collect rates, and other charges for the products and services provided by such legal entity or provided by the electric or other integrated utility system of such public agency which shall be at least sufficient to meet the operation and maintenance expenses of such electric or integrated utility system and to comply with all covenants pertaining thereto contained in, and all other provisions of, any resolution, trust indenture, or other security agreement relating to any bonds or other evidences of indebtedness issued or to be issued by any such public agency or legal entity and to generate funds sufficient to fulfill the terms of all other contracts and agreements made by such public agency, legal entity, or both, and to pay all other amounts payable from or constituting a lien or charge on the revenues derived from such legal entity's products and services or constituting a lien or charge on the revenues of such public agency's electric or other integrated utility system;

12. Provisions obligating such legal entity to enforce the covenants and obligations of each such public agency with which such legal entity has entered into a contract or agreement with respect to such electric project;

13. Provisions obligating such legal entity not to permit any such public agency to withdraw from such legal entity until all contractual obligations and duties of such legal entity and each such public agency with which it has entered into a contract or agreement with respect to such electric project have been fully performed, discharged, or both;

CODING: Words in square through type are deletions from existing law; words underlined are additions.
14. Provisions obligating each such public agency which has entered into a contract or agreement with such legal entity with respect to an electric project not to withdraw from, or cause or participate in the dissolution of, such legal entity until all duties and obligations of such legal entity and each such public agency arising from all contracts and agreements entered into by such legal entity, public agency, or both, have been fully performed, discharged, or both; and

15. Provisions obligating each such public agency which has entered into a contract or agreement with such legal entity or which has entered into a contract or agreement with any other person or persons with respect to such electric project to maintain its electric or other integrated utility system in good repair and operating condition until all duties and obligations of each such public agency and each such legal entity arising out of all contracts and agreements with respect to such electric project entered into by each such public agency, legal entity, or both, have been fully performed, discharged, or both.

All actions taken by an agent designated in accordance with the provisions of any such agreement may, if so provided in the agreement, be made binding upon such public agency, legal entity, or both, without further action or approval by such public agency, legal entity, or both, and any agent or agents designated in any such agreement shall be governed by the laws and rules applicable to such agent as a separate entity and not by any laws or rules which may be applicable to any of the other participating parties and not otherwise applicable to the agent.

CODING: Words in square brackets are deletions from existing law; words underlined are additions.
capacity, energy, or any combination thereof, and if the
revenues from such contract or contracts are pledged as
security for payment of bonds or other evidence of
indebtedness issued by such legal entity or if such revenues
are required by such legal entity to meet its obligations
under any contract or agreement entered into by such legal
entity pursuant to paragraph (b), to any other electric
utility or foreign public utility for a period not to exceed 5
years from the last to occur of the date of commercial
operation of, or the date of acquisition by such legal entity
of any ownership interest in or right to acquire services,
output, energy, capacity, or any combination thereof from the
electric project from which such services, output, energy,
capacity, or any combination thereof are to be acquired, if
one or more members of such legal entity shall have contracted
to purchase such services, output, energy, capacity, or any
combination thereof from such legal entity commencing upon the
expiration of such period, and if such services, output,
energy, capacity, or any combination thereof, if acquired
commencing at an earlier time, could have been reasonably
predicted to create a surplus or surpluses in the electric
system or systems of such member or members during such
period, when added to services, energy, output, capacity, or
any combination thereof available to such member or members
during such period from facilities owned by such member or
members or pursuant to one or more then existing firm
contractual obligations which are not terminable prior to the
end of such period without payment of a penalty, or both, or
to any combination of the above. Nothing contained in this
paragraph shall prevent such legal entity from selling the
output of its ownership interest in any such electric project

CODING: Words in Swoosh through type are deletions from existing law; words underlined are additions.
entity, or both, or the taking or purchase of electric energy
from the electric project;

3. The taxpayers, property owners, and citizens,
including nonresidents owning property or subject to taxation
therein, of each county or municipality in which each such
public agency is located and the holders of any outstanding
debt obligations of any such legal entity or public agency.

All such parties who are made defendants and over whom the
court acquires jurisdiction in such validation proceedings
shall be required to show cause, if any exists, why such
contracts or agreements and the terms and conditions thereof
should not be inquired into by the court and the validity of
the terms thereof determined and the matters and conditions
imposed on the parties to such contracts or agreements and all
such undertakings thereof adjudicated to be valid and binding
on the parties thereto. Notice of such proceedings shall be
required to be issued and published pursuant to the provisions
of subsection (7)(c), and a copy of the complaint in such
proceedings, together with a copy of such notice, shall be
served on each party defendant referred to in subparagraphs 1,
and 2. who is made a defendant and over whom the court
acquires jurisdiction in such validation proceedings. Any
person resident of this state and any person not a resident of
or located within this state, whether or not authorized to
transact business in this state, contracting with any such
public agency, legal entity, or both, in any manner relating
to such electric project, may intervene in the validation
proceedings at or before the time set for the validation
hearing and assert any ground or objection to the validity and

CODING: Words in * italics* are deletions from existing law; words underlined are additions.
such pledge shall specify the priority and ranking of such
pledges in respect of other pledges, if any, of the same
revenues, securities, contract rights, or other property by
such public agency or legal entity. Any pledge of revenues,
securities, contract rights, or other property made by any
such public agency, legal entity, or both, pursuant to this
section, shall be valid and binding from the date the pledge
is made. The revenues, securities, contract rights or other
property so pledged and then held or thereafter received by
such public agency, legal entity, or any fiduciary, or such
other person or persons shall immediately be subject to the
lien of the pledge without any physical delivery thereof or
further act, and the lien of the pledge shall be valid and
binding as against all parties having claims of any kind in
tort, contract, or otherwise against the public agency or
legal entity making such pledge without regard to whether such
parties have notice thereof. The resolution, trust indenture,
security agreement or other instrument by which a pledge is
created need not be filed or recorded in any manner.

(g) Any such legal entity is hereby authorized and
empowered to sue and be sued in its own name. In the event
that any such public agency or legal entity shall enter into a
contract or an agreement with respect to, or shall own an
interest in, an electric project located in another state, an
action against such public agency or legal entity may be
brought in the federal or state courts located in such state.

(h) The provisions of this subsection shall be
liberally construed to effect the purposes hereof. The powers
conferred by the provisions of this subsection shall be in
addition and supplementary to the powers conferred by the
other provisions of this section, by any other law, general,
local, or special, or by any charter of any public agency; and
when the exercise of any power conferred on any public agency
or any legal entity by the provisions of this subsection would
conflict with any limitation or requirement upon such public
agency or such legal entity contained in the other provisions
of this section, in any other law, general, local, or special,
except s. 361.14, or in the charter of such public agency,
such limitation or requirement shall be superseded by the
provisions of this subsection for the purposes of the exercise
of such power pursuant to the provisions of this subsection.

(i) While any of the bonds or other evidences of
indebtedness issued by any such public agency or any such
legal entity pursuant to the authority granted by subsection
(7)(c) or other applicable law shall remain outstanding, or
while any such public agency or any such legal entity has any
undischarged duties or obligations under any contract or
agreement, including, but not limited to, obligations to any
operator of or joint owner of any electric project, the
powers, duties, or existence of such public agency or such
legal entity or of its officers, employees, or agents shall
not be diminished, impaired, or affected in any manner which
will affect materially and adversely the interests and rights
of the owners of such bonds or other evidences of indebtedness
or the persons to whom such duties or obligations are owed
under such contracts or agreements. The provisions of this
subsection shall be for the benefit of the state, each such
public agency, each such legal entity, every owner of each
such legal entity’s or public agency’s bonds, and every other
person to whom such public agency or such legal entity owes a
duty or is obligated by contract or agreement and, upon and
after the earlier of the execution and delivery by any public

CODING: Words in small through type are deletions from existing law; words underlined are additions.
(1) In the event that any public agency, or any such legal entity, or both, should receive, in connection with its legal ownership or right to the services, output, capacity, or energy of an electric project, as defined in subsection (3)(d), any records, documents, papers, maps, books, tapes, photographs, files, sound recordings, or other business material, regardless of form or characteristics, which is designated by the person supplying such material as confidential proprietary business information or which any regulatory authority or court of competent jurisdiction shall have designated as confidential or secret, such material shall be confidential and shall not be deemed to be public records as defined in s. 119.011(1).

Section 2. Section 361.09, Florida Statutes, is created to read:

361.09 Valuation of electric utility property.--Where any person having the right to exercise the power of eminent domain seeks the appropriation of property used or useful for the generation, transmission, or distribution of electric power, or for any combination thereof, and in connection therewith, any such public agency or legal entity shall be deemed to have all the additional powers, privileges, and rights provided in this subsection.

(1) The limitations on waiver in the provisions of s. 768.28 or any other law to the contrary notwithstanding, and in accordance with s. 13, Art. X, of the State Constitution, the Legislature hereby declares that any such legal entity and any public agency of this state that participates in any contract or agreement to any person with respect to an electric project, or the issuance of such bonds or other evidences of indebtedness, shall constitute an irrevocable contract by the state with the owners of the bonds or other evidences of indebtedness issued by such public agency or legal entity and the other person or persons to whom any such public agency or legal entity owes a duty or is obligated by any such contracts or agreements.

(k) Notwithstanding the definition of electric project contained in subsection (3)(d), any other provision of this subsection or of part II of chapter 361 limiting the parties which may participate jointly in electric projects, any public agency of this state which is an electric utility, or any separate legal entity created pursuant to the provisions of this section, whose membership shall consist only of electric utilities, which exercises or proposes to exercise the powers granted by part II of chapter 361, may exercise any or all of the powers provided in this subsection jointly with any other person with respect to the acquisition, extraction, conversion, use, transportation, storage, reprocessing, disposal, or any combination thereof of any primary fuel or source thereof, as well as any other materials resulting therefrom, only when such primary fuel or source thereof is to be used for the generation of electric energy in one or more electric projects by such legal entity, any member thereof, or any combination thereof, and in connection therewith, any such public agency or legal entity shall be deemed to have all the additional powers, privileges, and rights provided in this subsection.

CODING: Words in a struck through type are deletions from existing law; words underlined are additions.
energy, the jury shall determine solely the amount of
compensation to be paid, which compensation shall include the
replacement value of the property sought to be appropriated
less depreciation, together with going concern value, and,
where less than the entire property is sought to be
appropriated, any damages to the remainder caused by the
taking.

Section 3. Subsections (3) and (4) are added to
section 361.11, Florida Statutes, to read:

361.11 Definitions.--When used in this part:
(3) "Person" means:
(a) Any natural person;
(b) The United States, any state, any municipality,
political subdivision, municipal corporation created by or
pursuant to the laws of the United States or any state, or any
board, corporation, or other entity or body declared by or
pursuant to the laws of the United States or any state to be a
department, agency, or instrumentality of any thereof;
(c) Any corporation, not-for-profit corporation, firm,
partnership, cooperative association, electric cooperative, or
business trust of any nature whatsoever organized and existing
under the laws of the United States or any state; or
(d) Any foreign country, any political subdivision or
governmental unit of any foreign country or any corporation
not-for-profit corporation, firm, partnership, cooperative
association, electric cooperative, or business trust of any
nature whatsoever organized and existing under the laws of any
foreign country or of any political subdivision or
governmental unit thereof.

(4) "Foreign public utility" means: Any person as
defined in subsection (3), whose principal place of business is not located within this state,
which owns, maintains, or operates facilities for the
generation, transmission, or distribution of electric energy,
and which supplies electricity to retail or wholesale
customers, or both, on a continuous, reliable, and dependable
basis, or any affiliate or subsidiary of such person, the
business of which is limited to the generation or
transmission, or both, of electric energy and activities
reasonably incidental thereto.

Section 4. Section 361.12, Florida Statutes, is
amended to read:

361.12 Joint electric power supply project.--In
addition to its existing powers, any electric utility, or any
organization, association, or separate legal entity whose
membership shall consist only of electric utilities, by
participating in an agreement to implement a project, is
authorized and empowered to join with any one or more of the
following: Any other electric utility; Any organization,
association, or separate legal entity whose membership shall
consist only of electric utilities; one or more foreign public
utilities; or any other person, if the right to full
possess and to all of the use, services, output, and
capacity of any such project during the original estimated
useful life thereof is vested, subject to creditors' rights,
in any one or more of any such legal entity, in any one or
more electric utilities, in any one or more foreign public
utilities, or any combination thereof; or group of electric
utilities for the purpose or purposes of jointly financing,
acquiring, constructing, managing, operating, utilizing, and
owning any project or projects. Further, in the
implementation of this act, any group of electric utilities
may create any organization, association, or separate legal entity whose membership shall consist only of electric utilities for the accomplishment of the purposes of this act. However, no such organization, association, or separate legal entity may own, operate, or exercise the power of eminent domain with respect to any facilities for the retail distribution of electric energy, in accordance with the provisions of this act; and in the implementation of this act, may, by providing in the agreement, create any organization; association, or legal entity for the accomplishment of the purposes of this act.

Section 5. Section 361.13, Florida Statutes, is amended to read:

361.13 Powers.--Any electric utility, or any organization, association, or separate legal entity whose membership shall consist only of electric utilities, participating in an agreement to implement a project has the following additional powers as they may relate to the project:

1. To plan, finance, acquire, construct, purchase, operate, maintain, use, share cost of, own, lease, sell, or dispose of any project or projects within or without the state.

2. To exercise the power of eminent domain.

3. To purchase capacity or energy, or both, in any quantity agreed upon in the joint power agreement from any project in which the purchaser has an ownership interest.

Section 6. Section 361.14, Florida Statutes, is amended to read:

361.14 Limitation on sale, etc., of joint project energy.--The additional powers and authority specifically provided for in this chapter are granted in no way be considered construed to authorize or permit the joint ownership of any project by, or the direct or indirect sale or transfer of the services, products, capacity, or energy of any project to, any person or persons other than electric utilities, foreign public utilities, any organization, association, or separate legal entity whose membership shall consist only of electric utilities, or any combination thereof, except that joint ownership of any such project with any other person shall be permitted if the right to full possession and to all of the use, services, output, and capacity of any such project during the original estimated useful life thereof is vested, subject to creditors' rights, in any one or more of any such legal entity, in any one or more electric utilities, in any one of more foreign public utilities, or any combination thereof, by the project; except to electric utilities which have entered into a project agreement with each other. Nothing herein contained shall limit or restrict any joint participant in selling, transferring, or distributing any portion of its entitlement of capacity or energy or both in a project.

Section 7. All of the additional powers and authority granted by this act to a public agency as defined in s. 163.01(3)(b), a legal entity created pursuant to the provisions of s. 163.01, or both, respecting agreements for participation in electric projects shall apply to any agreement in existence as of the date this act shall take effect, as well as to any such agreement entered into thereafter, but no additional limitation provided in this act upon any power or authority of any such public agency, legal entity, or both, respecting agreements for participation in
electric projects shall apply to any such agreement entered
into prior to the effective date of this act.

Section 8. This act shall be deemed to be enacted for
the purpose of further implementing the provisions of section
10(d) of Article VII, of the State Constitution, as amended.

Section 9. If any section, paragraph, clause or
provision of this act or any part thereof shall be finally
adjudicated by a court of competent jurisdiction to be
invalid, it is the legislative intent that the remainder of
this act shall remain in full force and effect as though such
section, paragraph, clause, or provision or part thereof so
adjudicated to be invalid had not been included herein.

Section 10. This act shall take effect upon becoming a
law.

-----------------------------------------------

HOUSE SUMMARY

Amends various provisions of the Florida Statutes
relating to entities which produce electric power to:
1. Provide a list of powers with respect to public
agencies which are electric utilities, whose membership
consist only of public utilities, which exercise powers
granted pursuant to the Joint Power Act (part II of Chapter
361, F.S.).
2. Provide a method of valuing electric utility
property subject to eminent domain.
3. Provide a listing of types of organizations which
may participate in joint electric supply projects.
4. Provide for limitations on the sale of joint
electric supply projects.
See bill for details.
A BILL relating to:
(Brief statement of subject)

electric power;

By Senator .................................................................
District .................................................................

Chairman's signature .................................................................

and:

Secretary of Senate

SENATE ACTION

Read 1st Time .................................................................
Referred to Committees on:

<table>
<thead>
<tr>
<th>Committee</th>
<th>Favorable</th>
<th>Unfavorable</th>
<th>Amended</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMMERCE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GOVERNMENTAL AFFAIRS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ECONOMIC, COMMUNITY &amp; CONG. AFFAIRS</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Read 2nd Time .................................................................
Read 3rd Time .................................................................

HOUSE ACTION

Read 1st Time .................................................................

<table>
<thead>
<tr>
<th>Committee</th>
<th>Favorable</th>
<th>Unfavorable</th>
<th>Amended</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMMERCE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GOVERNMENTAL AFFAIRS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>ECONOMIC, COMMUNITY &amp; CONG. AFFAIRS</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Read 2nd Time .................................................................
Read 3rd Time .................................................................

Motion to Reconsider by Senator .................................................................

Motion to Reconsider pending .................................................................

Impliedly Certified to Senate .................................................................

Impliedly Certified to House .................................................................

Laid on Table .................................................................

Laid on Table under Rule .................................................................

Motion to Reconsider by Senator .................................................................

SENATE AMEND. TO HOUSE AMEND., ACTION — See reverse side

HOUSE AMENDMENTS, ACTION — See reverse side
A bill to be entitled
An act relating to electric power; adding s.
163.01(3)(d), (e), (f), (g), (15), Florida
Statutes, and amending s. 163.01(7)(c) of said
section; defining the terms "electric project",
"person", "electric utility" and "foreign
public utility" with respect to the Florida
Interlocal Cooperation Act of 1969; providing
for the issuance of bonds by any separate legal
entity created pursuant to said act whose
membership is comprised only of electric
utilities; providing certain additional powers
and waiving certain rights of sovereign
immunity with respect to certain entities which
exercise or propose to exercise the powers
granted pursuant to the Joint Power Act, part
II of chapter 361, Florida Statutes; creating
s. 361.09, Florida Statutes; providing for the
valuation of electric utility property in
eminent domain proceedings; adding s.
361.11(3), (4), Florida Statutes; defining the
terms "person" and "foreign public utility" for
the purpose of the Joint Power Act; amending s.
361.12, Florida Statutes; providing for joint
electric power supply projects; amending s.
361.13, Florida Statutes; providing certain
organizations consisting solely of electric
utilities with the powers of parties
participating in joint electric power supply
projects; amending s. 361.14, Florida Statutes;
providing limitations on sales with respect to
Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (d), (e), (f), and (g) are added to subsection (3) of section 163.01, Florida Statutes, paragraph (c) of subsection (7) of said section is amended, and subsection (15) is added to said section to read:

163.01 Florida Interlocal Cooperation Act of 1969.

(3) As used in this section:

(d) "Electric project" means:

1. Any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, located within or without the state, used or useful in the generation, production, transmission, purchase, sale, exchange or interchange of electric capacity and energy, including facilities and property for the acquisition, extraction, conversion, transportation, storage, reprocessing or disposal of fuel and other materials of any kind for any such purposes.

2. Any interest in, or right to the use, services, output or capacity of, any such plant, works, system or facilities.

3. Any study to determine the feasibility or costs of any of the foregoing, including, but not limited to, engineering, legal, financial, and other services necessary or appropriate to determining the legality and financial and
engineering feasibility of any project referred to in
subparagraph 1. or subparagraph 2.

(e) "Person" means:

1. Any natural person;

2. The United States, any state, any municipality,
   political subdivision; municipal corporation-created by or
   pursuant to the laws of the United States or any state, or any
   board, corporation, or other entity or body declared by or
   pursuant to the laws of the United States or any state to be a
   department, agency or instrumentality of any thereof;

3. Any corporation, not for profit corporation, firm,
   partnership, cooperative association, electric cooperative, or
   business trust of any nature whatsoever organized and existing
   under the laws of the United States or any state; or

4. Any foreign country, any political subdivision or
   governmental unit of any foreign country or any corporation,
   not for profit corporation, firm, partnership, cooperative
   association, electric cooperative or business trust of any
   nature whatsoever organized and existing under the laws of any
   foreign country or of any political subdivision or
   governmental unit thereof.

(f) "Electric Utility" means any municipality,
   authority, commission, or other public body, investor-owned
   electric utility, or rural electric cooperative which owns,
   maintains, or operates an electrical energy generation,
   transmission, or distribution system within the state on June
   25, 1975.

(g) "Foreign Public Utility" means any person whose
   principal location or principal place of business is not
   located within this state, which owns, maintains or operates
   facilities for the generation, transmission or distribution of
electric energy, and which supplies electricity to retail or
wholesale customers, or both, on a continuous, reliable and
dependable basis, or any affiliate or subsidiary of such
person, the business of which is limited to the generation or
transmission, or both, of electric energy and activities
reasonably incidental thereto.

(7)

(c) No separate legal or administrative entity created
by an interlocal agreement shall possess the power or
authority to levy any type of tax within the boundaries of any
governmental unit participating in the interlocal agreement,
to issue any type of bond in its own name, or in any way to
obligate financially a governmental unit participating in the
interlocal agreement. However, any separate legal entity,
whose membership shall consist only comprised of electric
utilities, which is as defined in s. 361-11(2) and created for
the purpose of exercising the powers granted by part II of
chapter 361, the "Joint Power Act," may, for the purpose of
financing or refinancing the costs of an a joint electric
power supply project as defined in said part, exercise all
powers in connection with the authorization, issuance, and
sale of bonds as are conferred upon municipalities by parts
part I, II, and III of chapter 159 or part III of chapter 166,
or both. Any such entity may also issue bond anticipation
notes, as provided by s. 215.431, in connection with the
authorization, issuance, and sale of such bonds. All of the
privileges, benefits, powers, and terms of parts part I, II,
and III of chapter 159 and part III of chapter 166,
notwithstanding any limitations provided above, shall be fully
applicable to such entity. In addition, the governing body of
such legal entity may also authorize bonds to be issued and
sold from time to time and delegate, to such officer, official or agent of such legal entity as the governing body of such legal entity shall select, the power to determine the time, manner (public or private) of sale, maturities, rate and rates of interest (which may be fixed or may vary at such time or times 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 such legal entity; provided, however, that the amounts and maturities of and interest rate and rates on such bonds shall be within the limits prescribed by the governing body of such legal entity in its resolution delegating to such officer, official or agent the power to authorize the issuance and sale of such bonds. Bonds issued pursuant to this section may be validated as provided in chapter 75 and s. 163.01(15)(e). However, the complaint in any action to validate such bonds shall be filed only in the Circuit Court for Leon County. The notice required to be published by s. 75.06 shall be published only in Leon County, and the complaint and order of the circuit court shall be served only on the State Attorney of the Second Judicial Circuit and on the state attorney of each circuit in which a public agency municipality participating in the electric project subject bond issue lies. Notice of such proceedings shall be published in the manner and at the time required by s. 75.06, in Leon County and in each county in which any portion of any public agency participating in the electric project lies.

(15) Notwithstanding any other provision of this section or of any other law except s. 361.14, any public agency of this state which is an electric utility, or any...
separate legal entity created pursuant to the provisions of this section, whose membership shall consist only of electric utilities, which exercises or proposes to exercise the powers granted by part II of chapter 361, the "Joint Power Act," may exercise any or all of the following powers:

(a) Any such public agency, legal entity, or both, may plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend or otherwise participate jointly in one or more electric projects, proposed, existing or under construction, located or to be located within or without this state with any one or more of the following:

1. Any such legal entity;
2. One or more electric utilities;
3. One or more foreign public utilities; or
4. Any other person;

if the right to full possession and to all of the use, services, output and capacity of any such electric project during the original estimated useful life thereof is vested (subject to creditors' rights) in any one or more of any such legal entity, in any one or more electric utilities, in any one or more foreign public utilities, or any combination thereof; and may act as agent, or designate one or more persons, whether or not participating in an electric project, to act as its agent in connection with the planning, design, engineering, licensing, acquisition, construction, completion, management, control, operation, maintenance, repair, renewal, addition, replacement, improvement, modification, insuring, decommissioning, cleanup, retirement, disposal, or all of the foregoing, of such electric project or electric projects.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
(b) In any case in which any such public agency, legal entity, or both, participates in an electric project with any one or more of the following:

1. Any such legal entity;
2. One or more electric utilities;
3. One or more foreign public utilities; or
4. Any other person;

if the right to full possession and to all of the use, services, output and capacity of any such electric project during the original estimated useful life thereof is vested (subject to creditors' rights) in any one or more of any such legal entity, in any one or more electric utilities, in any one or more foreign public utilities, or any combination thereof; such public agency, legal entity or both, may enter into an agreement or agreements with respect to such electric project with the other person or persons participating therein, and such legal entity may enter into an agreement or agreements with one or more public agencies who are parties to the interlocal agreement creating such legal entity, and any such agreement may be for such period, including, but not limited to, an unspecified period, and contain such other terms, conditions and provisions consistent with the provisions of this section as the parties thereto shall determine. In connection with entry into and performance pursuant to any such agreement, the selection of any person or persons with which any such public agency, legal entity, or both, may enter into any such agreement, and the selection of any electric project to which such agreement may relate, no such public agency or legal entity shall be required to comply with any statute, general, local or special, or with any

CODING: Words in square through type are deletions from existing law; words underlined are additions.
charter provision of any public agency, which would otherwise
require public bidding, competitive negotiation, or both,
including, but not limited to, the provisions of s. 287.055.
Any such agreement may include, but need not be limited to,
any or all of the following:

a. Provisions defining what constitutes a default
thereunder and providing for the rights and remedies of the
parties thereto upon the occurrence of such a default,
including, without limitation, the right to discontinue the
delivery of products or services to a defaulting party and
requirements that the remaining parties not in default who are
entitled to receive products or services from the same
electric project may be required to pay for and use or
otherwise dispose of, on a proportionate or other basis, all
or some portion of the products and services which were to be
purchased by the defaulting party;

b. Provisions granting one or more of the parties the
option to purchase the interest or interests of one or more
other parties in the electric project upon such occurrences,
at such times and pursuant to such terms and conditions as the
parties may agree, notwithstanding the limitations on options
in the provisions of s. 689.22, the common-law rule against
perpetuities or any other law to the contrary;

c. Provisions setting forth restraints on alienation
of the interests of the parties in the electric project;

d. Provisions for the planning, design, engineering,
licensing, acquisition, construction, completion, management,
control, operation, maintenance, repair, renewal, addition,
replacement, improvement, modification, insuring,
decommissioning, clean up, retirement, disposal or all of the
foregoing of such electric project by any one or more of the
parties to such agreement, which party or parties may be

designated in or pursuant to such agreement as agent or agents

on behalf of itself and one or more of the other parties

thereto or by such other means as may be determined by the

parties thereto.

e. Provisions for a method or methods of determining

and allocating among or between the parties the costs of

planning, design, engineering, licensing, acquisition,

construction, completion, management, control, insuring,

operation, maintenance, repair, renewal, addition,

replacement, improvement, modification, decommissioning,

retirement, cleanup, disposal, or all of the foregoing with

respect to such electric project;

f. Provisions that any such public agency, legal

entity, or both, will not rescind, terminate or amend any

contract or agreement relating to such electric project

without the consent of one or more persons with which such

public agency, legal entity, or both, has entered into an

agreement pursuant to this section or without the consent of

one or more persons to whom any such public agency, legal

entity, or both, has made a covenant or who is a third party

beneficiary of any such covenant;

g. Provisions whereby any such public agency, legal

entity, or both, is obligated to pay for the products and

services of such electric project, and support including,

without limitation, those activities set forth in

subsubparagraph d. of this paragraph of such electric project

without setoff or counterclaim and irrespective of whether

such products or services are furnished, made available or

delivered to such public agency, or legal entity, or both, or

whether any electric project contemplated by such contract or
agreement is completed, operable, or operating, and
notwithstanding suspension, interruption, interference,
reduction or curtailment of the products and services of such
electric project; and notwithstanding the quality, or failure,
of performance of any one or more of the activities set forth
in subsubparagraph d, of this paragraph with respect to such
electric project;

h. Provisions that in the event of the failure or
refusal of any such public agency, legal entity, or both, to
perform punctually any specified covenant or obligation
contained in or undertaken pursuant to any such agreement, any
one or more parties to such agreement or any one or more
persons who has been designated in such agreement as a third
party beneficiary of such covenant or obligation may enforce
such public agency's or legal entity's performance by an
action at law or in equity, including, but not limited to,
specific performance or mandamus;

i. Provisions obligating any such public agency, legal
entity, or both, to indemnify (including, without limitation,
indemnification against the imposition or collection of local,
state or federal taxes and interest or penalties related
thereto, or payments made in lieu thereof), hold harmless or
waive claims or rights for recovery, including claims or
rights for recovery based on sole negligence, gross negligence
or any other type of negligence, or any other act or omission,
intentional or otherwise, against one or more of the other
parties to such agreement, and such provisions may define the
class or classes of persons for whose acts, intentional or
otherwise, a party shall not be responsible, and all of such
provisions may be upon such terms and conditions as the
parties thereto shall determine;

CODING: Words in stack through type are deletions from existing law; words underlined are additions.
j. Provisions obligating any such legal entity, public agency, or both, not to dissolve until all principal and interest payments for all bonds and other evidences of indebtedness issued by such legal entity, public agency, or both, have been paid or otherwise provided for and until all contractual obligations and duties of such legal entity and such public agencies have been fully performed, discharged, or both;

k. Provisions obligating any such public agency, legal entity, or both, to establish, levy and collect rents, rates and other charges for the products and services provided by such legal entity or provided by the electric or other integrated utility system of such public agency which shall be at least sufficient to meet the operation and maintenance expenses of such electric or integrated utility system and to comply with all covenants pertaining thereto contained in, and all other provisions of, any resolution, trust indenture or other security agreement relating to any bonds or other evidences of indebtedness issued or to be issued by any such public agency or legal entity and to generate funds sufficient to fulfill the terms of all other contracts and agreements made by such public agency, legal entity, or both, and to pay all other amounts payable from or constituting a lien or charge on the revenues derived from such legal entity's products and services or constituting a lien or charge on the revenues of such public agency's electric or other integrated utility system;

l. Provisions obligating such legal entity to enforce the covenants and obligations of each such public agency with which such legal entity has entered into a contract or agreement with respect to such electric project;

CODING: Words in crossed through type are deletions from existing law; words underlined are additions.
m. Provisions obligating such legal entity not to permit any such public agency to withdraw from such legal entity until all contractual obligations and duties of such legal entity and each such public agency with which it has entered into a contract or agreement with respect to such electric project have been fully performed, discharged, or both.

n. Provisions obligating each such public agency which has entered into a contract or agreement with such legal entity with respect to an electric project not to withdraw from, or cause or participate in the dissolution of, such legal entity until all duties and obligations of such legal entity and each such public agency arising from all contracts and agreements entered into by such legal entity, such public agency, or both, have been fully performed, discharged, or both; and

o. Provisions obligating each such public agency which has entered into a contract or agreement with such legal entity or which has entered into a contract or agreement with any other person or persons with respect to such electric project to maintain its electric or other integrated utility system in good repair and operating condition until all duties and obligations of each such public agency and each such legal entity arising out of all contracts and agreements with respect to such electric project entered into by each such public agency, legal entity, or both, have been fully performed, discharged, or both. All actions taken by an agent designated in accordance with the provisions of any such agreement may, if so provided in the agreement, be made binding upon such public agency, legal entity, or both, without further action or approval by such public agency.
legal entity, or both, and any agent or agents designated in
any such agreement shall be governed by the laws and
regulations applicable to such agent as a separate entity and
not by any laws or regulations which may be applicable to any
of the other participating parties and not otherwise
applicable to the agent.

(c) Any such legal entity may acquire services,
output, capacity, energy, or any combination thereof only
from:

1. An electric project in which it has an ownership
interest, or

2. Any other source:
   a. To the extent of replacing the services, output,
capacity, energy or any combination thereof of its share of an
electric project when the output or capacity of such electric
project is reduced or unavailable, or
   b. At any time and in any amount for resale to any of
its members as necessary to meet their retail load
requirements;

provided, however, that under 2.b. such legal entity may not
purchase wholesale power for resale to any of its members from
any electric utility as a result of any legal proceeding
commenced by the legal entity or any of its members after
January 1, 1982, before any state or federal court or
administrative body to the extent that such purchase or
proceeding would involuntarily expand the electric utility's
responsibility to provide such wholesale power.

(d) Any such legal entity may sell services, output,
capacity, energy, or any combination thereof, only:
1. To its members to meet their retail load requirements;

2. To other electric utilities or foreign public utilities which have an ownership interest in, or a contractual arrangement which imposes on such electric utility or foreign public utility obligations which are the economic equivalent of an ownership interest in, the electric project from which such services, output, capacity, energy, or any combination thereof, are to be acquired;

3. To any other electric utility or foreign public utility to dispose of services, output, capacity, energy, or any combination thereof, that is surplus to the requirements of such legal entity, if such surplus results from default by one or more of the members of such legal entity under a contract or contracts for the purchase of such services, output, capacity, energy, or any combination thereof, and if the revenues from such contract or contracts are pledged as security for payment of bonds or other evidence of indebtedness issued by such legal entity or if such revenues are required by such legal entity to meet its obligations under any contract or agreement entered into by such legal entity pursuant to paragraph (15)(b) of this section;

4. To any other electric utility or foreign public utility for a period not to exceed 5 years from the last to occur of the date of commercial operation of, or the date of acquisition by such legal entity of an ownership interest in or right to acquire services, output, energy, capacity, or any combination thereof, from the electric project from which such services, output, energy, capacity, or any combination thereof, are to be acquired if:

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
a. One or more members of such legal entity shall have contracted to purchase such services, output, energy, capacity, or any combination thereof, from such legal entity commencing upon the expiration of such period, and if

b. Such services, output, energy, capacity, or any combination thereof, if acquired commencing at an earlier time, could have been reasonably predicted to create a surplus or surpluses in the electric system or systems of such member or members during such period, when added to services, energy, output, capacity, or any combination thereof, available to such member or members during such period from facilities owned by such member or members or pursuant to one or more then existing firm contractual obligations which are not terminable prior to the end of such period without payment of a penalty, or both; or

5. To any combination of the above. Nothing contained in this paragraph shall prevent such legal entity from selling the output of its ownership interest in any such electric project to any electric utility or foreign public utility as emergency, scheduled maintenance or economy interchange service.

(e) All obligations and covenants of any such public agency, legal entity, or both, contained in any contract or agreement authorized, permitted or contemplated by this section, which obligations and covenants are authorized, permitted or contemplated by this section, shall be the legal, valid and binding obligations and covenants of the public agency or legal entity undertaking such obligation or making such covenant, and each such obligation and each such covenant shall be enforceable in accordance with its terms.
(f) When contract payments by any such public agency contracting with any such legal entity or revenues of any such public agency contracting with any other person or persons with respect to an electric project are to be pledged as security for the payment of bonds or other evidences of indebtedness sought to be validated, the complaint for validation may make parties defendant to such action, in addition to the state, and the taxpayers, property owners and citizens of the county in which the complaint for validation is filed, including nonresidents owning property or subject to taxation therein:

1. Every public agency whose contract payments are to be so pledged;

2. Any other person contracting with such public agency, legal entity, or both, in any manner relating to such electric project, and particularly with relation to any ownership or operation of any electric project or to the supplying of electric energy to such public agency, legal entity, or both, or the taking or purchase of electric energy from the electric project;

3. The taxpayers, property owners and citizens, including nonresidents owning property or subject to taxation therein, of each county or municipality in which each such public agency is located and the holders of any outstanding debt obligations of any such legal entity or public agency.

All such parties who are made defendants and over whom the court acquires jurisdiction in such validation proceedings shall be required to show cause, if any exists, why such contracts or agreements and the terms and conditions thereof should not be inquired into by the court and the validity of
the terms thereof determined and the matters and conditions
imposed on the parties to such contracts or agreements and all
such undertakings thereof adjudicated to be valid and binding
on the parties thereto. Notice of such proceedings shall be
included in the notice of validation hearing heretofore
required to be issued and published pursuant to the provisions
of s. 163.01(7)(c), and a copy of the complaint in such
proceedings, together with a copy of such notice, shall be
served on each party defendant referred to in subparagraphs 1,
and 2. who is made a defendant and over whom the court
acquires jurisdiction in such validation proceedings. Any
person resident of this state and person not a resident of or
located within this state, whether or not authorized to
transact business in this state, contracting with any such
public agency, legal entity, or both, in any manner relating
to such electric project may intervene in the validation
proceedings at or before the time set for the validation
hearing and assert any ground or objection to the validity and
binding effect of such contract or agreement on his own behalf
and on behalf of any such public agency and of all citizens,
residents and property owners of the state. No appeal may be
taken by any person who was not a party of record in such
proceedings at the time the judgment appealed from was
rendered. An adjudication as to the validity of any such
contract or agreement, unexcepted to within 30 days of the
date of entry of the judgment of validation, or if an appeal
is filed, which shall be confirmed on appeal, shall be forever
conclusive and binding upon such legal entity and all such
parties who are made defendants and over whom the court
acquires jurisdiction in such validation proceedings.

CODING: Words in strike through type are deletions from existing law; words underlined are additions.
(g) Each such public agency, legal entity, or both, contracting with any other person or persons with respect to the ownership or operation of any electric project, and each such public agency contracting with any legal entity for the support or supply of power from an electric project, is hereby authorized to pledge to such other person or persons, such legal entity, or both, for the benefit of such electric project all or any portion of the revenues derived or to be derived, in the case of any such public agency, from the ownership and operation of its electric or other integrated utility system and, in the case of a legal entity, from the provision of products and services by it and to pledge to such other person or persons, such legal entity, or both, for the benefit of such electric project any securities, contract rights, and other property. Each such legal entity is also authorized to pledge to, or for the benefit of the holders of any bonds, notes or other evidences of indebtedness issued by such legal entity, as security for the payment thereof, any revenues, securities, contract rights or other property. Any such pledge shall specify the priority and ranking of such pledge in respect of other pledges, if any, of the same revenues, securities, contract rights or other property by such public agency or legal entity. Any pledge of revenues, securities, contract rights or other property made by any such public agency, legal entity, or both, pursuant to this section shall be valid and binding from the date the pledge is made. The revenues, securities, contract rights or other property so pledged and then held or thereafter received by such public agency, legal entity, or any fiduciary, or such other person or persons shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act.
and the lien of the pledge shall be valid and binding as
against all parties having claims of any kind in tort,
contract, or otherwise against the public agency or legal
entity making such pledge without regard to whether such
parties have notice thereof. The resolution, trust indenture,
security agreement or other instrument by which a pledge is
created need not be filed or recorded in any manner.

(h) Any such legal entity is hereby authorized and
empowered to sue and be sued in its own name. In the event
that any such public agency or legal entity shall enter into a
contract or an agreement with, respect to or shall own an
interest in an electric project located in another state, an
action against such public agency or legal entity may be
brought in the federal or state courts located in such state.

(i) The provisions of this subsection shall be
liberally construed to effect the purposes hereof. The powers
conferred by the provisions of this subsection shall be in
addition and supplementary to the powers conferred by the
other provisions of this section, by any other law, general,
local or special, or by any charter of any public agency, and
when the exercise of any power conferred on any public agency
or any legal entity by the provisions of this subsection would
conflict with any limitation or requirement upon such public
agency or such legal entity contained in the other provisions
of this section, in any other law, general, local or special,
or in the charter of such public agency, except s. 361.14,
such limitation or requirement shall be superseded by the
provisions of this subsection for the purposes of the exercise
of such power pursuant to the provisions of this subsection.

(j) While any of the bonds or other evidences of
indebtedness issued by any such public agency or any such
legal entity pursuant to the authority granted by s. 163.01(7)(c) or other applicable law shall remain outstanding or while any such public agency or any such legal entity has any undischarged duties or obligations under any contract or agreement, including, but not limited to, obligations to any operator of or joint owner of any electric project, the powers, duties, or existence of such public agency or such legal entity or of its officers, employees or agents shall not be diminished, impaired, or affected in any manner which will affect materially and adversely the interests and rights of the owners of such bonds or other evidences of indebtedness or the persons to whom such duties or obligations are owed under such contracts or agreements. The provisions of this subsection shall be for the benefit of the state, each such public agency, each such legal entity, every owner of each such legal entity’s or public agency’s bonds and every other person to whom such public agency or such legal entity owes a duty or is obligated by contract or agreement and, upon and after the earlier of the execution and delivery by any public agency or legal entity pursuant to this section of any contract or agreement to any person with respect to an electric project, or the issuance of such bonds or other evidences of indebtedness, shall constitute an irrevocable contract by the state with the owners of the bonds or other evidences of indebtedness issued by such public agency or legal entity and the other person or persons to whom any such public agency or legal entity owes a duty or is obligated by any such contracts or agreements.

(k) The limitations on waiver in the provisions of s. 768.28 or any other law to the contrary notwithstanding, and in accordance with s. 13, Art. X, State Constitution, the
Legislature hereby declares that any such legal entity and any public agency of this state that participates in any electric project waives its sovereign immunity to:

1. All other persons participating therein, and
2. Any person in any manner contracting with a legal entity of which any such public agency is a member, with relation to
   a. Ownership, operation or any other activity set forth in s. 163.01(15)(b)4.d. with relation to any electric project, or
   b. The supplying or purchasing of services, output, capacity, energy, or any combination thereof.

(1) Notwithstanding the definition of electric project contained in s. 163.01(d), any other provision of this subsection or part II of chapter 361 limiting the parties which may participate jointly in electric projects, any public agency of this state which is an electric utility, or any separate legal entity created pursuant to the provisions of this section, whose membership shall consist only of electric utilities, which exercises or proposes to exercise the powers granted by part II of chapter 361, may exercise any or all of the powers provided in this subsection jointly with any other person with respect to the acquisition, extraction, conversion, use, transportation, storage, reprocessing, disposal, or any combination thereof, of any primary fuel or source thereof (as well as any other materials resulting therefrom) only when such primary fuel or source thereof is to be used for the generation of electric energy in one or more electric projects by such legal entity, any member thereof, or any combination thereof, and in connection therewith, any such public agency or legal entity shall be deemed to have all the

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
additional powers, privileges and rights provided in this subsection.

(m) In the event that any public agency, or any such legal entity, or both, should receive, in connection with its joint ownership or right to the services, output, capacity or energy of an electric project, as defined in s. 163.01(3)(d), any records, documents, papers, maps, books, tapes, photographs, files, sound recordings, or other business material, regardless of form or characteristics, which is designated by the person supplying such material as confidential proprietary business information or which any regulatory authority or court of competent jurisdiction shall have designated as confidential or secret, such material shall be confidential and shall not be deemed to be public records as defined in s. 119.011(1).

Section 2. Section 361.09, Florida Statutes, is created to read:

361.09 Valuation of Electric Utility Property.--Where any person having the right to exercise the power of eminent domain seeks the appropriation of property used or useful for the generation, transmission or distribution of electric energy, the jury shall determine solely the amount of compensation to be paid, which compensation shall include the replacement value of the property sought to be appropriated less depreciation, together with going concern value, and, where less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking.

Section 3. Subsections (3) and (4) are added to section 361.11, Florida Statutes, to read:

361.11 Definitions.--When used in this part:

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
(3) "Person" means:
  (a) Any natural person;
  (b) The United States, any state, any municipality, political subdivision, municipal corporation created by or pursuant to the laws of the United States or any state, or any board, corporation or other entity or body declared by or pursuant to the laws of the United States or any state to be a department, agency or instrumentality of any thereof;
  (c) Any corporation, not for profit corporation, firm, partnership, cooperative association, electric cooperative, or business trust of any nature whatsoever organized and existing under the laws of the United States or any state; or
  (d) Any foreign country, any political subdivision or governmental unit of any foreign country or any corporation, not for profit corporation, firm, partnership, cooperative association, electric cooperative or business trust of any nature whatsoever organized and existing under the laws of any foreign country or of any political subdivision or governmental unit thereof.

(4) "Foreign Public Utility" means: Any person as defined in subsection (3) whose principal location or principal place of business is not located within this state, which owns, maintains or operates facilities for the generation, transmission or distribution of electric energy, and which supplies electricity to retail or wholesale customers, or both, on a continuous, reliable and dependable basis, or any affiliate or subsidiary of such person, the business of which is limited to the generation or transmission, or both, of electric energy and activities reasonably incidental thereto.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
Section 4. Section 361.12, Florida Statutes, is amended to read:

361.12 Joint electric power supply project.--In addition to its existing powers, any electric utility or any organization, association, or separate legal entity whose membership shall consist only of electric utilities, by participating in an agreement to implement a project, is authorized and empowered to join with any one or more of the following:

1. Any other electric utility,
2. Any organization, association or separate legal entity whose membership shall consist only of electric utilities,
3. One or more foreign public utilities, or
4. Any other person if the right to full possession and to all of the use, services, output and capacity of any such project during the original estimated useful life thereof is vested (subject to creditors' rights) in any one or more of any such legal entity, in any one or more electric utilities, in any one or more foreign public utilities, or any combination thereof, or group of electric utilities for the purpose or purposes of jointly financing, acquiring, constructing, managing, operating, utilizing, or owning any project or projects; and, in the implementation of this act, any group of electric utilities may create any organization, association or separate legal entity whose membership shall consist only of electric utilities for the accomplishment of the purposes of this act; provided, however, that no such organization, association, or separate legal entity may own, operate, or exercise the power of eminent
domain with respect to any facilities for the retail
distribution of electric energy in accordance with the
provisions of this act, and, in the implementation of this
act, may, by providing in the agreement, create any
organization, association, or legal entity for the
accomplishment of the purposes of this act.

Section 5. Section 361.13, Florida Statutes, is
amended to read:

361.13 Powers.--Any electric utility, or any
organization, association, or separate legal entity whose
membership shall consist only of electric utilities,
participating in an agreement to implement a project has the
following additional powers as they may relate to the project:

(1) To plan, finance, acquire, construct, purchase,
operate, maintain, use, share cost of, own, lease, sell, or
dispose of any project or projects within or without the
state.

(2) To exercise the power of eminent domain, except to
acquire the generation, transmission, or distribution
facilities of any other electric utility or foreign public
utility.

(3) To purchase capacity or energy, or both, in any
quantity agreed upon in the joint power agreement from any
project in which the purchaser has an ownership interest.

Section 6. Section 361.14, Florida Statutes, is
amended to read:

361.14 Limitation on sale, etc., of joint project
energy.--The additional powers and authority specifically
provided for in this chapter are in no way be considered
construed to authorize or permit the joint ownership of any
project by, or the direct or indirect sale or transfer of the

CODING: Words in strike through type are deletions from existing law; words underlined are additions.
services, products, capacity or energy of any project to any
person or persons other than electric utilities, foreign
public utilities, any organization, association, or separate
legal entity whose membership shall consist only of electric
utilities, or any combination thereof, except that joint
ownership of any such project with any other person shall be
permitted if the right to full possession and to all of the
use, services, output and capacity of any such project during
the original estimated useful life thereof is vested (subject
to creditors' rights) in any one or more of any such legal
entity, in any one or more electric utilities, in any one or
more foreign public utilities, or any combination thereof
sale, transfer, or distribution of capacity or energy or both
by the project, except to electric utilities which have
entered into a project agreement with each other. Nothing
herein contained shall limit or restrict any joint participant
in selling, transferring, or distributing any portion of its
entitlement of capacity or energy or both in a project.

Section 7. All of the additional powers and authority
granted by this act to a public agency as defined in s.
163.01(3)(b), a legal entity created pursuant to the
provisions of s. 163.01, or both, respecting agreements for
participation in electric projects shall apply to any
agreement in existence as of the date this act shall become
effective as well as to any such agreement entered into
thereafter, but no additional limitation provided in this act
upon any power or authority of any such public agency, legal
entity, or both, respecting agreements for participation in
electric projects shall apply to any such agreement entered
into prior to the effective date of this act.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
Section 8. This act shall be deemed to be enacted for
the purpose of further implementing the provisions of Article
VII, section 10(d) of the State Constitution, as amended.

Section 9. If any section, paragraph, clause or
provision of this act or any part thereof shall be finally
adjudicated by a court of competent jurisdiction to be
invalid, the remainder of this act shall remain in full force
and effect as though such section, paragraph, clause or
provision or part thereof so adjudicated to be invalid had not
been included herein.

Section 10. This act shall take effect upon becoming a
law.

************************************************

SENATE SUMMARY

Amends the Florida Interlocal Cooperation Act of 1969 to
authorize the issuance of bonds and the exercise of
certain other powers by any separate legal entity created
by such act whose membership is comprised only of
electric utilities as defined in the Joint Power Act.
Provides definition. Waives sovereign immunity for
certain entities. See bill for details.

CODING: Words in struck through type are deletions from existing law; words underlined are additions.
A bill to be entitled
An act relating to electric power; adding
paragraphs (d), (e), (f), and (g) to s.
163.01(3), Florida Statutes, amending paragraph
(c) of subsection (7) thereof, and adding
subsection (15) thereto, defining the terms
"electric project," "person," "electric
utility," and "foreign public utility" with
respect to the Florida Interlocal Cooperation
Act of 1969; providing for the issuance of
bonds by any separate legal entity created
pursuant to said act whose membership is
comprised only of electric utilities; providing
certain additional powers and waiving certain
rights of sovereign immunity with respect to
certain entities which exercise or propose to
exercise the powers granted pursuant to part II
of chapter 361, Florida Statutes, the Joint
Power Act; creating s. 361.09, Florida
Statutes, relating to the valuation of electric
utility property subject to eminent domain;
adding subsections (3) and (4) to s. 361.11,
Florida Statutes, defining the terms "person"
and "foreign public utility" for the purposes
of the Joint Power Act; amending s. 361.12,
Florida Statutes, relating to joint electric
power supply projects, describing entities
which may participate in joint projects;
amending s. 361.13, Florida Statutes, relating
to powers of electric utilities and other
organizations; amending s. 361.14, Florida

CODING: Words in single strikethrough type are deletions from existing law; words underlined are additions.
1. Statutes, relating to limitations on sales with respect to joint project energy; providing for the additional powers and authority granted in this act to apply to certain preexisting agreements; providing a statement of purpose; providing for severability; providing an effective date.

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

Section 1. Paragraphs (d), (e), (f), and (g) are added to subsection (3) of section 163.01, Florida Statutes, paragraph (c) of subsection (7) of said section is amended, and subsection (15) is added to said section, to read:

163.01 Florida Intergovernmental Cooperation Act of 1969.--
(3) As used in this section:

(d) "Electric project" means:

1. Any plant, works, system, facilities, and real and personal property of any nature whatsoever, together with all parts thereof and appurtenances thereto, located within or without the state, used or useful in the generation, production, transmission, purchase, sale, exchange, or intercherege of electric capacity and energy, including facilities and property for the acquisition, extraction, conversion, transportation, storage, reprocessing, or disposal of fuel and other materials of any kind for any such purposes.

2. Any interest in, or right to the use, services, output, or capacity of any such plant, works, system, or facility.

3. Any study to determine the feasibility or costs of any of the foregoing, including, but not limited to,

CODING: Words in italics through type are deletions from existing law, words underlined are additions.
engineering, legal, financial, and other services necessary or appropriate to determining the legality and financial and engineering feasibility of any project referred to in subparagraph 1. or subparagraph 2.

(e) "Person" means:

1. Any natural person;

2. The United States, any state, any municipality, political subdivision, municipal corporation created by or pursuant to the laws of the United States or any state, or any board, corporation, or other entity or body declared by or pursuant to the laws of the United States or any state to be a department, agency, or instrumentality of any thereof;

3. Any corporation, not-for-profit corporation, firm, partnership, cooperative association, electric cooperative, or business trust of any nature whatsoever organized and existing under the laws of the United States or any state; or

4. Any foreign country, any political subdivision or governmental unit of any foreign country, or any corporation, not-for-profit corporation, firm, partnership, cooperative association, electric cooperative, or business trust of any nature whatsoever organized and existing under the laws of any foreign country or of any political subdivision or governmental unit thereof.

(f) "Electric utility" shall have the same meaning as in s. 361.11(2).

(g) "Foreign public utility" means any person as defined in paragraph (e), whose principal location or principal place of business is not located within this state, which owns, maintains, or operates facilities for the generation, transmission, or distribution of electric energy, and which supplies electricity to retail or wholesale

CODING: Words in strike through type are deletions from existing law, words underlined are additions.
customers, or both, on a continuous, reliable, and dependable
basis, or any affiliate or subsidiary of such person, the
business of which is limited to the generation or
transmission, or both, of electric energy and activities
reasonably incidental thereto.

(7)

(c) No separate legal or administrative entity created
by an interlocal agreement shall possess the power or
authority to levy any type of tax within the boundaries of any
governmental unit participating in the interlocal agreement,
to issue any type of bond in its own name, or in any way to
obligate financially a governmental unit participating in the
interlocal agreement. However, any separate legal entity,
whose membership shall consist only comprised of electric
utilities as defined in s. 361.11(2), which is and created for
the purpose of exercising the powers granted by part II of
chapter 361, the "Joint Power Act," may, for the purpose of
financing or refinancing the costs of an a joint electric
power-supply project as defined in said part, exercise all
powers in connection with the authorization, issuance, and
sale of bonds as are conferred upon municipalities by parts I,
II, and III part-I of chapter 159 or part III of chapter 166,
or both. Any such entity may also issue bond anticipation
notes, as provided by s. 215.431, in connection with the
authorization, issuance, and sale of such bonds. All of the
privileges, benefits, powers, and terms of parts I, II, and
III part-I of chapter 159 and part III of chapter 166,
notwithstanding any limitations provided above, shall be fully
applicable to such entity. In addition, the governing body of
such legal entity may also authorize bonds to be issued and
sold from time to time and delegate, to such officer.
official, or agent of such legal entity as the governing body
of such legal entity shall select, the power to determine the
time, manner of sale, public or private, maturities, rate and
rates of interest, which may be fixed or may vary at such time
or times 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 such legal entity.
However, the amounts and maturities of and interest rate and
rates on such bonds shall be within the limits prescribed by
the governing body of such legal entity in its resolution
delegating to such officer, official, or agent the power to
authorize the issuance and sale of such bonds. Bonds issued
pursuant to this section may be validated as provided in
chapter 75 and subsection (15)(e). However, the complaint in
any action to validate such bonds shall be filed only in the
Circuit Court for Leon County. The notice required to be
published by s. 75.06 shall be published only in Leon County,
and the complaint and order of the circuit court shall be
served only on the State Attorney of the Second Judicial
Circuit and on the state attorney of each circuit in which a
public agency or municipality participating in the electric
project subject bond issue lies. Notice of such proceedings
shall be published in the manner and at the time required by
s. 75.06, in Leon County and in each county in which any
portion of any public agency participating in the electric
project lies.
(15) Notwithstanding any other provision of this
section or of any other law except s. 361.14, any public
agency of this state which is an electric utility, or any
separate legal entity created pursuant to the provisions of

5

CODING: Words in italics through type are deletions from existing law, words underlined are additions.
this section, whose membership shall consist only of electric
utilities, which exercises or proposes to exercise the powers
granted by part II of chapter 361, the "Joint Power Act," may
exercise any or all of the following powers:
(a) Any such public agency, legal entity, or both, may
plan, finance, acquire, construct, reconstruct, own, lease,
operate, maintain, repair, improve, extend, or otherwise
participate jointly in one or more electric projects,
proposed, existing, or under construction, located or to be
located within or without this state with any one or more of
the following: (i) any such legal entity, (ii) one or more
electric utilities, (iii) one or more foreign public
utilities, or (iv) any other person, if the right to full
possession and to all of the use, services, output, and
capacity of any such electric project during the original
estimated useful life thereof is vested, subject to creditors'
rights, in any one or more of any such legal entities, in any
one or more electric utilities, in any one or more foreign
public utilities, or any combination thereof. Any such public
agency, legal entity, or both may act as agent, or designate
one or more persons, whether or not participating in an
electric project, to act as its agent in connection with the
planning, design, engineering, licensing, acquisition,
construction, completion, management, control, operation,
maintenance, repair, renewal, addition, replacement,
modification, insuring, decommissioning, cleanup,
retirement, disposal, or all of the foregoing, of such
electric project or electric projects.
(b) In any case in which any such public agency, legal
entity, or both, participate in an electric project with any
one or more of the following: (i) any such legal entity, (ii)
one or more electric utilities, (iii) one or more foreign public utilities, or (iv) any other person, if the right to full possession and to all of the use, services, output, and capacity of any such electric project during the original estimated useful life thereof is vested, subject to creditors' rights, in any one or more of any such legal entity in any one or more electric utilities, in any one or more foreign public utilities, or any combination thereof, such public agency, legal entity, or both, may enter into an agreement or agreements with respect to such electric project with the other person or persons participating therein, and such legal entity may enter into an agreement or agreements with one or more public agencies who are parties to the interlocal agreement creating such legal entity, and any such agreement may be for such period, including, but not limited to, an unspecified period, and contain such other terms, conditions, and provisions consistent with the provisions of this section as the parties thereto shall determine. In connection with entry into and performance pursuant to any such agreement, the selection of any person or persons with which any such public agency, legal entity, or both, may enter into any such agreement, and the selection of any electric project to which such agreement may relate, no such public agency or legal entity shall be required to comply with any statute, general, local, or special, or with any charter provision of any public agency, which would otherwise require public bidding, competitive negotiation, or both, including, but not limited to, the provisions of s. 287.055. Any such agreement may include, but need not be limited to, any or all of the following:

CODING: Words in small through type are deletions from existing law, words underscored are additions.
1. Provisions defining what constitutes a default thereunder and providing for the rights and remedies of the parties thereto upon the occurrence of such a default, including, without limitation, the right to discontinue the delivery of products or services to a defaulting party and requirements that the remaining parties not in default who are entitled to receive products or services from the same electric project may be required to pay for and use or otherwise dispose of, on a proportionate or other basis, all or some portion of the products and services which were to be purchased by the defaulting party;

2. Provisions granting one or more of the parties the option to purchase the interest or interests of one or more other parties in the electric project upon such occurrences, at such times and pursuant to such terms and conditions as the parties may agree, notwithstanding the limitations on options in the provisions of s. 689.22, the common law rule against perpetuities, or any other law to the contrary;

3. Provisions setting forth restraints on alienation of the interests of the parties in the electric project;

4. Provisions for the planning, design, engineering, licensing, acquisition, construction, completion, management, control, operation, maintenance, repair, renewal, addition, replacement, improvement, modification, insuring, decommissioning, clean-up, retirement, disposal, or all of the foregoing of such electric project by any one or more of the parties to such agreement, which party or parties may be designated in or pursuant to such agreement as agent or agents on behalf of itself and one or more of the other parties thereto or by such other means as may be determined by the parties thereto;
5. Provisions for a method or methods of determining and allocating among or between the parties the costs of planning, design, engineering, licensing, acquisition, construction, completion, management, control, insuring, operation, maintenance, repair, renewal, addition, replacement, improvement, modification, decommissioning, retirement, clean-up, disposal, or all of the foregoing with respect to such electric project:

6. Provisions that any such public agency, legal entity, or both, will not rescind, terminate, or amend any contract or agreement relating to such electric project without the consent of one or more persons with which such public agency, legal entity, or both, has entered into an agreement pursuant to this section or without the consent of one or more persons to whom such public agency, legal entity, or both, has made a covenant or who is a third party beneficiary of any such covenant:

7. Provisions whereby any such public agency, legal entity, or both, is obligated to pay for the products and services of such electric project, and support, including, without limitation, those activities set forth in subparagraph "4. of this paragraph (b), of such electric project without set-off or counterclaim and irrespective of whether such products or services are furnished, made available, or delivered to such public agency, legal entity, or both, or whether any electric project contemplated by such contract or agreement is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the products and services of such electric project; and notwithstanding the quality, or failure, of performance of any one or more of the activities set forth
in subparagraph 4. of this paragraph (b) with respect to such
electric project;

6. Provisions that in the event of the failure or
refusal of any such public agency, legal entity, or both, to
perform punctually any specified covenant or obligation
contained in or undertaken pursuant to any such agreement, any
one or more parties to such agreement or any one or more
persons who has been designated in such agreement as a third
party beneficiary of such covenant or obligation may enforce
such public agency's or legal entity's performance by an
action at law or in equity, including, but not limited to,
specific performance or mandamus;

9. Provisions obligating any such public agency, legal
entity, or both, to indemnify, including, without limitation,
indemnification against the imposition or collection of local,
state, or federal taxes and interest or penalties related
thereto, or payments made in lieu thereof, hold harmless, or
waive claims or rights for recovery, including claims or
rights for recovery based on sole negligence, gross
negligence, or any other type of negligence, or any other act
or omission, intentional or otherwise, against one or more of
the other parties to such agreement, and such provisions may
define the class or classes of persons for whose acts,
intentional or otherwise, a party shall not be responsible,
and all of such provisions may be upon such terms and
conditions as the parties thereto shall determine;

10. Provisions obligating any such legal entity,
public agency, or both, not to dissolve until all principal
and interest payments for all bonds and other evidences of
indebtedness issued by such legal entity, public agency, or
both, have been paid or otherwise provided for and until all

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
contractual obligations and duties of such legal entity and
such public agencies have been fully performed, discharged, or
both:

11. Provisions obligating any such public agency,
legal entity, or both, to establish, levy, and collect rents,
rates, and other charges for the products and services,
provided by such legal entity or provided by the electric or
other integrated utility system of such public agency which
shall be at least sufficient to meet the operation and
maintenance expenses of such electric or integrated utility
system and to comply with all covenants pertaining thereto
contained in, and all other provisions of, any resolution,
trust indenture, or other security agreement relating to any
bonds or other evidences of indebtedness issued or to be
issued by any such public agency or legal entity and to
generate funds sufficient to fulfill the terms of all other
contracts and agreements made by such public agency, legal
entity, or both, and to pay all other amounts payable from or
constituting a lien or charge on the revenues derived from
such legal entity's products and services or constituting a
lien or charge on the revenues of such public agency's
electric or other integrated utility system;

12. Provisions obligating such legal entity to enforce
the covenants and obligations of each such public agency with
which such legal entity has entered into a contract or
agreement with respect to such electric project;

13. Provisions obligating such legal entity not to
permit any such public agency to withdraw from such legal
entity until all contractual obligations and duties of such
legal entity and each such public agency with which it has
entered into a contract or agreement with respect to such

11

CODING Words in struck through type are deletions; from existing text, words underlined are additions.
197-147A-2-2

14. Provisions obligating each such public agency which has entered into a contract or agreement with such legal entity with respect to an electric project not to withdraw from, or cause or participate in the dissolution of, such legal entity and each such public agency arising from all contracts and agreements entered into by such legal entity, public agency, or both, have been fully performed, discharged, or both; and

15. Provisions obligating each such public agency which has entered into a contract or agreement with such legal entity or which has entered into a contract or agreement with any other person or persons with respect to such electric project to maintain its electric or other integrated utility system in good repair and operating condition until all duties and obligations of each such public agency and each such legal entity arising out of all contracts and agreements with respect to such electric project entered into by each such public agency, legal entity, or both, have been fully performed, discharged, or both.

All actions taken by an agent designated in accordance with the provisions of any such agreement may, if so provided in the agreement, be made binding upon such public agency, legal entity, or both, without further action or approval by such public agency, legal entity, or both, and any agent or agents designated in any such agreement shall be governed by the laws and rules applicable to such agent as a separate entity and not by any laws or rules which may be applicable to any of the

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
other participating parties and not otherwise applicable to

the agent.

(c) Any such legal entity may acquire services, output, capacity, energy, or any combination thereof only

from: (i) An electric project in which it has an ownership

interest, or (ii) any other source, (A) to the extent of

replacing the services, output, capacity, energy or any

combination thereof of its share of an electric project when

the output or capacity of such electric project is reduced or

unavailable, or (B) at any time and in any amount for resale
to any of its members as necessary to meet their retail load
requirements. Provided, however, that under (ii)(B) such

legal entity may not purchase wholesale power for resale to

any of its members from any electric utility as a result of

any legal proceeding commenced by the legal entity or any of

its members after January 1, 1982, before any state or federal

court or administrative body, to the extent that such purchase

or proceeding would involuntarily expand the electric

utility's responsibility to provide such wholesale power. Any

such legal entity may sell services, output, capacity, energy,
or any combination thereof only to (i) its members to meet

their retail load requirements, (ii) to other electric

utilities or foreign public utilities which have an ownership

interest in, or a contractual arrangement which imposes on

such electric utility or foreign public utility obligations

which are the economic equivalent of an ownership interest in,

the electric project from which such services, output,
capacity, energy, or any combination thereof are to be

acquired, (iii) to any other electric utility or foreign

public utility to dispose of services, output, capacity,

energy, or any combination thereof that is surplus to the

CODING: Words in strike through type are deletions from existing law, words underlined are additions.
requirements of such legal entity, if such surplus results
from default by one or more of the members of such legal
entity under a contract or contracts for the purchase of such
services, output, capacity, energy, or any combination
thereof, and if the revenues from such contract or contracts
are offered as security for payment of bonds or other evidence
of indebtedness issued by such legal entity or if such
revenues are required by such legal entity to meet its
obligations under any contract or agreement entered into by
such legal entity pursuant to paragraph (15)(b), (iv) to any
other electric utility or foreign public utility for a period
not to exceed 5 years from the last to occur of the date of
commercial operation of, or the date of acquisition by such
legal entity of any ownership interest in or right to acquire
services, output, energy, capacity, or any combination thereof
from the electric project from which such services, output,
energy, capacity, or any combination thereof are to be
acquired, if (A) one or more members of such legal entity
shall have contracted to purchase such services, output,
energy, capacity, or any combination thereof from such legal
entity commencing upon the expiration of such period, and if
(B) such services, output, energy, capacity, or any
combination thereof, if acquired commencing at an earlier
time, could have been reasonably predicted to create a surplus
or surpluses in the electric system or systems of such member
or members during such period, when added to services, energy,
output, capacity, or any combination thereof available to such
member or members during such period from facilities owned by
such member or members or pursuant to one or more then
existing firm contractual obligations which are not terminable
prior to the end of such period without payment of a penalty.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
or both, or (v) to any combination of the above. Nothing contained in this paragraph shall prevent such legal entity from selling the output of its ownership interest in any such electric project to any electric utility or foreign public utility as emergency, scheduled maintenance, or economy interchange service.

(d) All obligations and covenants of any such public agency, legal entity, or both, contained in any contract or agreement authorized, permitted, or contemplated by this section, which obligations and covenants are authorized, permitted, or contemplated by this section, shall be the legal, valid, and binding obligations and covenants of the public agency or legal entity undertaking such obligation or making such covenant, and each such obligation and each such covenant shall be enforceable in accordance with its terms.

(e) When contract payments by any such public agency contracting with any such legal entity or revenues of any such public agency contracting with any other person or persons with respect to an electric project are to be pledged as security for the payment of bonds or other evidences of indebtedness sought to be validated, the complaint for validation may make partition defendant to such action, in addition to the state, and the taxpayers, property owners, and citizens of the county in which the complaint for validation is filed, including nonresidents owning property or subject to taxation therein:

1. Every public agency whose contract payments are to be so pledged;

2. Any other person contracting with such public agency, legal entity, or both, in any manner relating to such electric project, and particularly with relation to any.

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
ownership or operation of any electric project or to the
supplying of electric energy to such public agency, legal
entity, or both, or the taking or purchase of electric energy
from the electric project:

3. The taxpayers, property owners, and citizens,
including nonresidents owning property or subject to taxation
therein, of each county or municipality in which each such
public agency is located and the holders of any outstanding
debt obligations of any such legal entity or public agency.

All such parties who are made defendants and over whom the
court acquires jurisdiction in such validation proceedings
shall be required to show cause, if any exists, why such
contracts or agreements and the terms and conditions thereof
should not be insulated into the court and the validity of
the terms thereof determined and the matters and conditions
imposed on the parties to such contracts or agreements and all
such undertakings thereof adjudicated to be valid and binding
on the parties thereto. Notice of such proceedings shall be
included in the notice of validation hearing heretofore
required to be issued and published pursuant to the provisions
of subsection (7)(c), and a copy of the complaint in such
proceedings, together with a copy of such notice, shall be
served on each party defendant referred to in subparagraphs 1,
and 2, who is made a defendant and over whom the court
acquires jurisdiction in such validation proceedings. Any
person resident of this state and any person not a resident of
or located within this state, whether or not authorized to
transact business in this state, contracting with any such
public agency, legal entity, or both, in any manner relating
to such electric project, may intervene in the validation

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
proceedings at or before the time set for the validation hearing and assert any ground or objection to the validity and binding effect of such contract or agreement on his own behalf, and on behalf of any such public agency and of all citizens, residents, and property owners of the state. No appeal may be taken by any person who was not a party of record in such proceedings at the time the judgment appealed from was rendered. An adjudication as to the validity of any such contract or agreement, from which no appeal has been taken within the time permitted by law from the date of entry of the judgment of validation, or if an appeal is filed, which shall be confirmed on appeal, shall be forever conclusive and binding upon such legal entity and all such parties who are made defendants and over whom the court acquired jurisdiction in such validation proceedings.

(f) Each such public agency, legal entity, or both, contracting with any other person or persons with respect to the ownership or operation of any electric project, and each such public agency contracting with any legal entity for the support of or supply of power from an electric project, is hereby authorized to pledge to such other person or persons, such legal entity, or both, for the benefit of such electric project, all or any portion of the revenue derived or to be derived, in the case of any such public agency, from the ownership and operation of its electric or other integrated utility system and, in the case of a legal entity, from the provision of products and services by it and to pledge to such other person or persons, such legal entity, or both, for the benefit of such electric project any securities, contract rights, and other property. Each such legal entity is also authorized to pledge to or for the benefit of the holders of
any bonds, notes, or other evidences of indebtedness issued by any legal entity, as security for the payment thereof, any revenues, securities, contract rights, or other property. Any such pledge shall specify the priority and ranking of such pledge in respect of other pledges, if any, of the same revenues, securities, contract rights, or other property by such public agency or legal entity. Any pledge of revenues, securities, contract rights, or other property made by any such public agency, legal entity, or both, pursuant to this section, shall be valid and binding from the date the pledge is made. The revenues, securities, contract rights or other property so pledged and then held or thereafter received by such public agency, legal entity, or any fiduciary, or such other person or persons shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the public agency or legal entity making such pledge without regard to whether such parties have notice thereof. The resolution, trust indenture, security agreement or other instrument by which a pledge is created need not be filed or recorded in any manner.

(g) Any such legal entity is hereby authorized and empowered to sue and be sued in its own name. In the event that any such public agency or legal entity shall enter into a contract or an agreement with respect to, or shall own an interest in, an electric project located in another state, an action against such public agency or legal entity may be brought in the federal or state courts located in such state.

(h) The provisions of this subsection shall be liberally construed to effect the purposes hereof. The powers

CODING: Words in struck through type are deletions from existing law. Words underlined are additions.
conferred by the provisions of this subsection shall be in
addition and supplementary to the powers conferred by the
other provisions of this section, by any other law, general,
local, or special, or by any charter of any public agency; and
when the exercise of any power conferred on any public agency
or any legal entity by the provisions of this subsection would
conflict with any limitation or requirement upon such public
agency or such legal entity contained in the other provisions
of this section, in any other law, general, local, or special,
except s. 361.14, or in the charter of such public agency,
such limitation or requirement shall be superseded by the
provisions of this subsection for the purposes of the exercise
of such power pursuant to the provisions of this subsection.

(1) While any of the bonds or other evidences of
indebtedness issued by any such public agency or any such
legal entity pursuant to the authority granted by subsection
(7)(c) or other applicable law shall remain outstanding, or
while any such public agency or any such legal entity has any
undischarged duties or obligations under any contract or
agreement, including, but not limited to, obligations to any
operator of or joint owner of any electric project, the
powers, duties, or existence of such public agency or such
legal entity or of its officers, employees, or agents shall
not be diminished, impaired, or affected in any manner which
will affect materially and adversely the interests and rights
of the owners of such bonds or other evidences of indebtedness
or the persons to whom such duties or obligations are owed
under such contracts or agreements. The provisions of this
subsection shall be for the benefit of the state, each such
public agency, each such legal entity, every owner of each
such legal entity's or public agency's bonds, and every other
person to whom such public agency or such legal entity owes a
duty or is obligated by contract or agreement and, upon and
after the earlier of the execution and delivery by any public
agency or legal entity, pursuant to this section, of any
contract or agreement to any person with respect to an
electric project, or the issuance of such bonds or other
evidences of indebtedness, shall constitute an irrevocable,
contract by the state with the owners of the bonds, or other
evidences of indebtedness issued by such public agency or
legal entity and the other person or persons to whom any such
public agency or legal entity owes a duty or is obligated by
any such contracts or agreements.

(i) The limitations on waiver in the provisions of s.
768.213 or any other law to the contrary notwithstanding, and
in accordance with s. 11, Art. X, of the State Constitution,
the Legislature hereby declares that any such legal entity and
any public agency of this state that participates in any
electric project waives its sovereign immunity to (a) all
other persons participating therein and to (b) any person in
any manner contracting with a legal entity of which any such
public agency is a member, with relation to (i) ownership,
operation, or any other activity set forth in paragraph (b) 4,
with relation to any electric project or, to (ii) the
supplying or purchasing of services, output, capacity, energy,
or any combination thereof.

(k) Notwithstanding the definition of electric project
contained in subsection (3)(d), any other provision of this
subsection or of part II of chapter 361 limiting the parties
which may participate jointly in electric projects, any public
agency of this state which is an electric utility, or any
separate legal entity created pursuant to the provisions of

CODING: Words in struck through type are deletions from existing law. Words underlined are additions.
this section, whose membership shall consist only of electric
utilities, which exercise or proposes to exercise the powers
granted by part II of chapter 361, may exercise any or all of
the powers provided in this subsection jointly with any other
person with respect to the acquisition, extraction,
conversion, use, transportation, storage, reprocessing,
conversion, conversion, storage, reprocessing,
disposal, or any combination thereof of any primary fuel or
source thereof, as well as any other materials resulting
therefrom, only when such primary fuel or source thereof is to
be used for the generation of electric energy in one or more
electric projects by such legal entity, any member thereof, or
any combination thereof, and in connection therewith, any such
public agency or legal entity shall be deemed to have all the
additional powers, privileges, and rights provided in this
subsection.

(1) In the event that any public agency, or any such
legal entity, or both, should receive, in connection with its
joint ownership or right to the services, output, capacity, or
energy of an electric project, as defined in subsection
(3), any records, documents, papers, maps, books, tapes,
photographs, files, sound recordings, or other business
material, regardless of form or characteristics, which is
designated by the person supplying such material as
confidential proprietary business information or which any
regulatory authority or court of competent jurisdiction shall
have designated as confidential or secret, such material shall
be confidential and shall not be deemed to be public records
as defined in s. 119.011(1).

Section 2. Section 361.09, Florida Statutes, is
created and added to part I of chapter 361, Florida Statutes,
to read:

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
197-1471-2-2

361.09 Valuation of electric utility property.--Where any person having the right to exercise the power of eminent domain seeks the appropriation of property used for the generation, transmission, or distribution of electric energy, the jury shall determine solely the amount of compensation to be paid, which compensation shall include the reproduction cost of the property sought to be appropriated less diminution, together with going concern value, and, where less than the entire property is sought to be appropriated, any damages to the remainder caused by the taking.

Section 3. Subsections (3) and (4) are added to section 361.11, Florida Statutes, to read:

361.11 Definitions.--When used in this part:

(3) "Person" means:

(a) Any natural person;

(b) The United States, any state, any municipality, political subdivision, municipal corporation created by or pursuant to the laws of the United States or any state, or any board, corporation, or other entity or body declared by or pursuant to the laws of the United States or any state to be a department, agency, or instrumentality of any thereof;

(c) Any corporation, not-for-profit corporation, firm, partnership, cooperative association, electric cooperative, or business trust of any nature whatsoever organized and existing under the laws of the United States or any state;

(d) Any foreign country, any political subdivision or governmental unit of any foreign country or any corporation, not-for-profit corporation, firm, partnership, cooperative association, electric cooperative, or business trust of any nature whatsoever organized and existing under the laws of any

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
foreign country or of any political subdivision or governmental unit thereof.

(4) "Foreign public utility" means: Any person as defined in subsection (3), whose principal location or principal place of business is not located within this state, which owns, maintains, or operates facilities for the generation, transmission, or distribution of electric energy, and which supplies electricity to retail or wholesale customers, or both, on a continuous, reliable, and dependable basis, or any affiliate or subsidiary of such person, the business of which is limited to the generation or transmission, or both, of electric energy and activities reasonably incidental thereto.

Section 4. Section 361.12, Florida Statutes, is amended to read:

361.12  Joint electric power supply project. -- In addition to its existing powers, any electric utility, or any organization, association, or separate legal entity whose membership shall consist only of electric utilities, by participating in an agreement to implement a project, is authorized and empowered to join with any one or more of the following: (i) any other electric utility, (ii) any organization, association, or separate legal entity whose membership shall consist only of electric utilities, (iii) one or more foreign public utilities, or (iv) any other person, if the right to full possession and to all of the use, services, output, and capacity of any such project during the original estimated useful life thereof is vested, subject to creditors' rights, in any one or more of any such legal entity, in any one or more electric utilities, in any one or more foreign public utilities, or any combination thereof; or group of
electric utilities for the purpose or purposes of jointly
financing, acquiring, constructing, managing, operating, or
utilizing, and owning any project or projects; and, in the
implementation of this act, any group of electric utilities
may create any organization, association, or separate legal
entity whose membership shall consist only of electric
utilities for the accomplishment of the purposes of this act.
However, no such organization, association, or separate legal
domains with respect to any facilities for the retail
distribution of electric energy, in accordance with the
provisions of this act, and, in the implementation of this
act, may, by providing in the agreement, create any
organization, association, or separate legal entity for the
accomplishment of the purposes of this act.
Section 5. Section 361.13, Florida Statutes, is
amended to read:
361.13 Powers.—Any electric utility, or any
organization, association, or separate legal entity whose
memberships shall consist only of electric utilities,
participating in an agreement to implement a project has the
following additional powers as they may relate to the project:
(1) To plan, finance, acquire, construct, purchase,
operate, maintain, own, share cost of, own, lease, sell, or
dispose of any project or projects within or without the
state.
(2) To exercise the power of eminent domain, except to
acquire the generation, transmission or distribution
facilities of any other electric utility or foreign public
utility.
197-147A-2-2

(3) To purchase capacity or energy, or both, in any quantity agreed upon in the joint power agreement from any project in which the purchaser has an ownership interest.

Section 6. Section 361.14, Florida Statutes, is amended to read:

361.14 Limitation on sale, etc., of joint project energy.--The additional powers and authority specifically provided for in this chapter are not to authorize or permit the joint ownership of any project by, or the direct or indirect sale or transfer of the services, products, capacity, or energy of any project to, any person or persons other than electric utilities, foreign public utilities, any organization, association, or separate legal entity whose membership shall consist only of electric utilities, or any combination thereof, except that joint ownership of any such project with any other person shall be permitted if the right to full possession and to all of the use, services, output, and capacity of any such project during the original estimated useful life thereof is vested, subject to creditors' rights, in any one or more of any such legal entity, in any one or more electric utilities, in any one of more foreign public utilities, or any combination thereof.

Sections 7. All of the additional powers and authority granted by this act to a public agency as defined in s. 163.01(3)(b), a legal entity created pursuant to the

CODING: Words in struck through type are deletions from existing law, words underlined are additions.
provisions of s. 163.01, or both, respecting agreements for participation in electric projects shall apply to any agreement in existence as of the date this act shall take effect, as well as to any such agreement entered into thereafter, but no additional limitation provided in this act upon any power or authority of any such public agency, legal entity, or both, respecting agreements for participation in electric projects shall apply to any such agreement entered into prior to the effective date of this act.

Section 8. This act shall be deemed to be enacted for the purpose of further implementing the provisions of section 12(3) of Article VII, of the State Constitution, as amended.

Section 9. If any section, paragraph, clause or provision of this act or any part thereof shall be finally adjudicated by a court of competent jurisdiction to be invalid, it is the legislative intent that the remainder of this act shall remain in full force and effect as though such section, paragraph, clause, or provision or part thereof so adjudicated to be invalid had not been included herein.

Section 10. This act shall take effect upon becoming a law.
Amends various provisions of the Florida Statutes relating to entities which produce electric power to:

1. Provide a list of powers with respect to public agencies which are electric utilities, whose membership consist only of public utilities, which exercise powers granted pursuant to the Joint Power Act (part II of chapter 361, F.S.).

2. Provide a method of valuing electric utility property subject to eminent domain.

3. Provide a listing of types of organizations which may participate in joint electric supply projects.

4. Provide for limitations on the sale of joint electric supply projects.

See bill for details.
BILL SUMMARY
COMMITTEE ON ENERGY

BILL NO: HB 765
SPONSOR: James H. Thompson
OTHER REFERENCES: None
COMPANION/SIMILAR: SB 950 (Senator Dunn and others)
DATE: February 15, 1982
STAFF CONTACT: Dana D. Minerva

SUMMARY

Present Situation

Municipal utilities have traditionally acquired the electricity they sold to retail customers from investor-owned utilities such as Florida Power and Light Company and Florida Power Corporation. The municipals now say that it is questionable whether the investor-owned utilities will have sufficient capacity to supply the electricity needs of the growing municipalities. The municipals would also like to avoid paying "wheeling" charges—payments made by the municipals to the investor-owned utilities for the use of their transmission lines.

One solution to these perceived problems is for the municipal utilities to build their own generating or transmission facilities or to acquire ownership interests in parts of projects being built by the investor-owned utilities. The capital costs of such projects, however, are prohibitive for individual municipal utilities.

Under the Florida Interlocal Cooperation Act of 1969 [163.01, F.S.] and the Joint Power Act of 1975 [361.11, F.S.] legal entities composed of electric utilities, both public and private, are authorized to construct and operate joint power supply "projects" as defined by the Joint Power Act. These legal entities are also empowered by the statutes and the Florida constitution to issue revenue bonds to finance these "projects". [361.11(l), F.S., see also FLA. CON. ART. VII s. 10(d)] These "legal entities" may not tax or pledge the "full faith and credit" of the public agencies which
belong to these entities and only "electric utilities" existing as of June 25, 1975, may participate in joint electric power supply projects [361.11(2), F.S.].

Some of the municipal utilities have formed a joint "legal entity" called the Florida Municipal Power Agency (FMPA) pursuant to existing laws. The FMPA has financed one generating facility jointly with the Orlando Utilities Commission. Also, the FMPA has recently completed negotiations with Florida Power and Light to purchase a part of the St. Lucie II nuclear generating plant.

The municipal utilities would like to increase their use of the joint legal entity vehicle to acquire interests in generating and transmission facilities both in and outside Florida. The FMPA requested that HB 765 be introduced to clarify and expand the authority of FMPA in relation to the issuance of the necessary revenue bonds and to remove certain statutory and common law impediments to these joint agreements.

Probable Effect of the Bill

The effect of this bill is to significantly expand and clarify the powers of legal entities composed entirely of publicly owned electric utilities and the investor-owned utilities they may wish to deal with. Because the bill is long and difficult to read the effect of each section will be discussed separately.

Electric Project Defined

The bill defines the term "electric project" for purposes of the Interlocal Cooperation Act. This definition appears to expand the types of projects for which there can be revenue bond financing instead of using the definition of "project" found in 361.11(1) as the type of project that can be financed by revenue bonds, the bill would require the use of the definition of electric project found in the bill. This definition of electric project includes the "extraction, conversion, transportation, storage, reprocessing, or disposal of fuel or other materials of any kind". It also includes feasibility or cost studies of "electric projects". Thus the types of projects for which revenue bonds may be issued appears to be expanded. Whether this would be constitutional under the provision of the constitution that allows a local government to give or lend its credit only for "joint ownership, construction and operation of electrical generating facilities" is unknown.
Additional Authority to Issue Bonds Under Parts II and III of Chapter 159

Currently, 163.01(7)(c) authorizes legal entities to exercise all powers in connection with the authorization, issuance and sale of bonds conferred upon municipalities under part I of chapter 159, Florida Statutes and part III of chapter 166 or both when they acquire ownership interests in projects. This bill would add parts II and III to those laws under which the legal entities gain powers to issue revenue bonds. One of the more important powers added to those the legal entity already has is the power to put mortgages on the project to secure the interests of the bondholders.

The bill also authorizes the legal entity to appoint an agent with the authority to set interest rates and terms and conditions of bond sales within limits set by the legal entity.


The bill

- Authorizes legal entities and public agencies to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend or jointly participate in one or more "electric project" and to appoint an agent in connection with these activities;

- Authorizes public agencies, legal entities or both to participate in electric projects with other legal entities, electric utilities or foreign public utilities or any other person;

- Exempts public agencies or legal entities from all laws related to public bidding and competitive negotiation, including 287.055, in relation to the entry into an agreement relating to an electric project;

- Permits the inclusion of the following kinds of provisions in these agreements:

  1. Defining default and providing rights and remedies related to default;
2. Granting one or more of the parties the option to purchase the interest of the defaulting party, notwithstanding various laws against perpetuities;

3. Setting forth restraints on alienation;

4. Requiring one or more of the parties to perform various functions related to the project, such as planning, licensing, construction, repair, or decommissioning;

5. Allocating the costs of such projects among parties;

6. Prohibiting the rescinding or termination of any contract relating to an electric project without the consent of person(s) with whom the public agency or legal entity has an agreement or covenant;

7. Requiring public agencies or legal entities to pay for the products or services of the projects irrespective of whether such products or services are delivered;

8. Authorizing parties or third party beneficiaries to the agreement or other contracts to enforce them by court action in law or equity;

9. Obligating the public agencies to indemnify any taxes paid by any party to meet the tax obligations of the public agencies or legal entities and releasing the persons they contract with from liability resulting from the negligence of certain classes of persons;

10. Obligating legal entities or public agencies not to dissolve before all principal and interest on bonds issued by the legal entity or agency are paid or provided for an all contractual obligations of such entities and member public agencies are performed;

11. Obligating public agencies or legal entities to establish rates and charges sufficient to meet operation and maintenance expenses, to comply with all contracts and to pay off the bonds;
12. Obligating the legal entity to enforce the covenants and obligation of the public agencies relating to the electric project;

13. Obligating a legal entity not to permit a public agency to withdraw from the legal entity until the contractual obligations of the legal entity and all the public agencies involved have been performed or discharged;

14. Prohibiting the public agency from withdrawing from the legal entity until all duties and obligations of the legal entity and each public agency which is a party to the contract have been fully discharged or performed;

15. Obligating each party public agency to maintain its electric utility system in good repair.

Provides that actions taken by an agent designated in accordance with the provisions of any such agreement may be binding on the public agency or legal entity without any further action by the agency or entity.

**Limitation on Acquisition of Power From Other Sources**

The bill provides that legal entities may only acquire services and capacity from an electric project in which it has an ownership interest, unless it needs to replace the services and capacity of the project because the output of the elective project is reduced or unavailable. The legal entity may not purchase wholesale power from any electric utility for the purpose of reselling to its customers if such a sale is the result of legal proceeding in a federal court or administrative body and such a sale would be involuntary on the part of the seller. The purpose of this section is to prevent the Federal Energy Regulatory Commission from requiring a utility to supply power to the legal entity beyond that required by the contract between the two.

The bill also specifies several limited circumstances which must exist before the legal entity can sell electricity to various persons.
Modified Bond Validation Proceedings

"Legal entities" may have difficulty floating revenue bonds because courts will not issue opinions as to the validity of the contracts which provided the revenues for the payment of the principal and interest to the bond holders. (See McCoy Restaurants, Inc. v. City of Orlando, 392 So. 2d 252, 253-4 (Fla. 1st DCA 1980). This decision was based on the rationale that the courts could not rule on the validity of contracts when the parties to the contracts were not parties to the proceedings before the courts. This bill would remedy this situation by making the parties to such contracts defendants in the bond validation proceeding. The bill directs the court to require defendants to show cause why the validity of such contracts should not be inquired into by the court. An adjudication of validity of the contracts in the bond validation would be "forever conclusive and binding" on the parties to the bond validation proceeding.

Pledges of Revenues to the Entity or Other Persons

The bill authorizes the public agencies and legal entities to pledge the revenues derived from the project to the "legal entity" or other persons i.e. bondholders.

Miscellaneous Provisions

Any "legal entity" is empowered to sue and be sued. The provisions of the subsection relating to the powers of legal entities and public agencies are to be liberally construed and the subsection supercedes all other law except 361.64 where there is a conflict.

Contracts Not To Be Impaired While Bonds Are Outstanding

While bonds issued under the law to be amended by the bill are outstanding, the powers of a public agency or legal entity may not be impaired in such a way so as to adversely affect the rights of bond holders. Contracts or bond agreements related to the project constitute irrevocable contracts between the state and the bondholders or parties to the contracts which may not be impaired by the state.

Waiver of Sovereign Immunity

Any public agency or legal entity which participates in an electric project waives its sovereign immunity in relation to all other persons related to the project.
Bill Summary

Bill No: HB 765

Page Seven

Exemption From Public Records Law

Materials supplied to public agencies or legal entities in connection with a project which are deemed by the supplier to be confidential or which has been determined to be confidential or secret by a court or regulatory agency will not be a "public record" for purposes of the public record law.

Valuation of Electric Utility Property

This section of the bill codifies existing case law relating to the valuation of condemned electric utility property. [See Dade County v. General Waterworks, 267 So. 2d 633, 641 (Fla. 1972). It should be noted that the method of valuation found in the bill apparently allows compensation for property contributed by the ratepayers.] The bill prohibits a legal entity from exercising the power of the eminent domain to acquire retail distribution facilities.

Person and Foreign Public Utility Defined

"Person" and "foreign public utility" is defined throughout the act so as to allow out of state corporation or firms to participate in joint projects.

Fiscal Impact

State Government

None

Local Government

According to its proponents, the bill would enable legal entities and the municipal electric utilities in existence on June 25, 1975, which participate in them to more easily and economically finance electric projects using revenue bonds.

Public Sector

According to proponents, ratepayers of both publicly and privately owned electricity would benefit from lower rates for electricity due to the lowered capital costs associated with tax-exempt revenue bonds which will be used to finance the electric projects.
Private Sector

Investor-owned utilities may buy up to twenty-five percent of the electricity produced by the parts of the projects financed by the entity or public agencies' tax exempt revenue bonds under existing IRS regulations. Due to the lowered capital costs associated with these revenue bonds, the cost of the electricity should be cheaper than electricity produced in the investor-owned utility's own plants. Increased use of capacity financed by the legal entity or public agencies by the investor-owned-utilities, a result proponents of the bill foresee, should, to some extent, relieve cash flow problems associated with high capital costs that some investor-owned utilities may experience.

COMMENTS

Many of the provisions which are specifically enumerated in this bill as being authorized to be placed in an agreement between municipal electric utilities as a joint entity and investor-owned utilities are cited by the spokesmen for the municipal utilities as provisions that might normally be expected in dealing between arms-length electric utility industry participants. For instance, why shouldn't the municipal pay for the project even if it produces no electricity or why shouldn't a municipal utility be subject to lawsuits if it fails to perform its contractual obligations? On the other hand, the municipal utilities are not on the same footing in the negotiations as the investor-owned utilities. Further, when an investor-owned utility makes an imprudent management decision which results in a loss, the investors may be required by the PSC to absorb the loss. On the other hand, if a municipally-owned utility makes an imprudent decision, no one must pay but its ratepayers.

The amended bond validation procedure which is proposed in this bill may have a constitutional defect. The bill provides that parties to contracts which form the basis for the repayment of the principal and interest on the bonds are made defendants for purposes of determining the validity of these contracts. This is done whether or not any facts are known which would place the validity of these contracts in question. The decision of the court is "forever conclusive and binding" (res judicata) on the parties. The problem is this. If a party subsequently learns of facts which may place the validity of a contract in question, he may not raise the question of validity because this issue has already been determined by a court of competent jurisdiction in the
bond validation proceeding. Therefore, this party may be denied due process and his access to the courts may be adversely affected. [See FLA. CON. ART. I § 21 (1968)].
BILL SUMMARY
Committee on Energy

BILL NO: CS/HB 765 (Chapter 82-53)
SPONSOR: Rep. James Harold Thompson
COMPANION: SB 950 (Sen. Edgar Dunn and others)
DATE: April 19, 1982
STAFF CONTACT: Dana D. Minerva

SUMMARY

House Bill 765 was introduced by Rep. James Harold Thompson and referred to the House Energy Committee. The Energy Committee made several technical amendments, reported the bill favorably, and placed it on the calendar. On March 5, the House passed the bill by a vote of 97 yeas and no nays. The Senate passed CS/HB 765 on March 10 by a vote of 31 years and no nays.

Present Situation

Municipal utilities have traditionally acquired the electricity they sold to retail customers from investor-owned utilities such as Florida Power and Light Company and Florida Power Corporation. The municipals now say that it is questionable whether the investor-owned utilities will have sufficient capacity to supply the electricity needs of the growing municipalities. The municipals would also like to avoid paying "wheeling" charges--payments made by the municipals to the investor-owned utilities for the use of their transmission lines.

One solution to these perceived problems is for the municipal utilities to build their own generating or transmission facilities or to acquire ownership interests in parts of projects being built by the investor-owned utilities. The capital costs of such projects, however, are prohibitive for individual municipal utilities.

Under the Florida Interlocal Cooperation Act of 1969 [163.01, F.S.] and the Joint Power Act of 1975 [361.11, F.S.] legal entities composed of electric utilities, both public and private, are authorized to construct and operate joint power supply "projects"
as defined by the Joint Power Act. These legal entities are also empowered by the statutes and the Florida constitution to issue revenue bonds to finance these "projects". [361.11(1), F.S.; see also FLA. CON. ART. VII s. 10(d)] These "legal entities" may not tax or pledge the "full faith and credit" of the public agencies which belong to these entities and only "electric utilities" existing as of June 25, 1975, may participate in joint electric power supply projects [361.11(2), F.S.].

Some of the municipal utilities have formed a joint "legal entity" called the Florida Municipal Power Agency (FMPA) pursuant to existing laws. The FMPA has financed one generating facility jointly with the Orlando Utilities Commission. Also, the FMPA has recently completed negotiations with Florida Power and Light to purchase a part of the St. Lucie II nuclear generating plant.

The municipal utilities would like to increase their use of the joint legal entity vehicle to acquire interests in generating and transmission facilities both in and outside Florida. The FMPA requested that HB 765 be introduced to clarify and expand the authority of FMPA in relation to the issuance of the necessary revenue bonds and to remove certain statutory and common law impediments to these joint agreements.

Probable Effect of the Bill

The effect of this bill is to significantly expand and clarify the powers of legal entities composed entirely of publicly owned electric utilities and the investor-owned utilities they may wish to deal with. Because the bill is long and difficult to read the effect of each section will be discussed separately.

Electric Project Defined

The bill defines the term "electric project" for purposes of the Interlocal Cooperation Act. This definition appears to expand the types of projects for which there can be revenue bond financing instead of using the definition of "project" found in 361.11(1) as the type of project that can be financed by revenue bonds, the bill would require the use of the definition of electric project found in the bill. This definition of electric project includes the "extraction, conversion, transportation, storage, reprocessing, or disposal of fuel or other materials of any kind". It also includes feasibility or cost
studies of "electric projects". Thus the types of projects for which revenue bonds may be issued appears to be expanded.

Additional Authority to Issue Bonds Under Parts II and III of Chapter 159

Currently, 163.01(7)(c) authorizes legal entities to exercise all powers in connection with the authorization, issuance and sale of bonds conferred upon municipalities under part I of Chapter 159, Florida Statutes and part III of Chapter 166 or both when they acquire ownership interests in projects. This bill would add parts II and III to those laws under which the legal entities gain powers to issue revenue bonds. One of the more important powers added to those the legal entity already has is the power to put mortgages on the project to secure the interests of the bondholders.

The bill also authorizes the legal entity to appoint an agent with the authority to set interest rates and terms and conditions of bond sales within limits set by the legal entity.

Gives "Public Agencies" and "Legal Entities" Additional Powers

The bill:

- Authorizes legal entities and public agencies to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, extend or jointly participate in one or more "electric project" and to appoint an agent in connection with these activities;

- Authorizes public agencies, legal entities or both to participate in electric projects with other legal entities, electric utilities or foreign public utilities or any other person;

- Exempts public agencies or legal entities from all laws related to public bidding and competitive negotiation, including 287.055, in relation to the entry into an agreement relating to an electric project;
Permits the inclusion of the following kinds of provisions in these agreements:

1. Defining default and providing rights and remedies related to default;

2. Granting one or more of the parties the option to purchase the interest of the defaulting party, notwithstanding various laws against perpetuities;

3. Setting forth restraints on alienation;

4. Requiring one or more of the parties to perform various functions related to the project, such as planning, licensing, construction, repair, or decommissioning;

5. Allocating the costs of such projects among parties;

6. Prohibiting the rescinding or termination of any contract relating to an electric project without the consent of person(s) with whom the public agency or legal entity has an agreement or covenant;

7. Requiring public agencies or legal entities to pay for the products or services of the projects irrespective of whether such products or services are delivered (so called "take or pay" provisions);

8. Authorizing parties or third party beneficiaries to the agreement or other contracts to enforce them by court action in law or equity;

9. Obligating the public agencies to indemnify any taxes paid by any party to meet the tax obligations of the public agencies or legal entities and releasing the persons they contract with from liability resulting from the negligence of certain classes of persons;

10. Obligating legal entities or public agencies not to dissolve before all principal and interest on bonds issued by the legal entity or agency are paid or provided for an all contractual obligations of such entities and member public agencies are performed;
Bill Summary
CS/HB 765
Page Five

11. Obligating public agencies or legal entities to establish rates and charges sufficient to meet operation and maintenance expenses, to comply with all contracts and to pay off the bonds;

12. Obligating the legal entity to enforce the covenants and obligations of the public agencies relating to the electric project;

13. Obligating a legal entity not to permit a public agency to withdraw from the legal entity until the contractual obligations of the legal entity and all the public agencies involved have been performed or discharged;

14. Prohibiting the public agency from withdrawing from the legal entity until all duties and obligations of the legal entity and each public agency which is a party to the contract have been fully discharged or performed;

15. Obligating each party public agency to maintain its electric utility system in good repair.

o Provides that actions taken by an agent designated in accordance with the provisions of any such agreement may be binding on the public agency or legal entity without any further action by the agency or entity.

Limitation on Acquisition of Power From Other Sources

The bill provides that legal entities may only acquire services and capacity from an electric project in which it has an ownership interest, unless it needs to replace the services and capacity of the project because the output of the elective project is reduced or unavailable. The legal entity may not purchase wholesale power from any electric utility for the purpose of reselling to its customers if such a sale is the result of legal proceeding in a federal court or administrative body and such a sale would be involuntary on the party of the seller. The purpose of this section is to prevent the Federal Energy Regulatory Commission from requiring a utility to supply power to the legal entity beyond that required by the contract between the two.
The bill also specified several limited circumstances which must exist before the legal entity can sell electricity to various persons.

**Modified Bond validation Proceedings**

"Legal entities" may have difficulty floating revenue bonds because courts will not issue opinions as to the validity of the contracts which provided the revenues for the payment of the principal and interest to the bond holders. (See McCoy Restaurants, Inc. v. City of Orlando, 392 So. 2d 252, 253-4 (Fla. 1st DCA 1980). This decision was based on the rationale that the courts could not rule on the validity of contracts when the parties to the contracts were not parties to the proceedings before the courts. This bill would remedy this situation by making the parties to such contracts defendants in the bond validation proceeding. The bill directs the court to require defendants to show cause why the validity of such contracts should not be inquired into by the court. An adjudication of validity of the contracts in the bond validation would be "forever conclusive and binding" on the parties to the bond validation proceeding.

**Pledges of Revenues to the Entity or Other Persons**

The bill authorizes the public agencies and legal entities to pledge the revenues derived from the project to the "legal entity" or other persons i.e. bondholders.

**Miscellaneous Provisions**

Any "legal entity" is empowered to sue and be sued. The provisions of the subsection relating to the powers of legal entities and public agencies are to be liberally construed and the subsection supercedes all other law except 361.64 where there is a conflict.

**Contracts Not To Be Impaired While Bonds Are Outstanding**

While bonds issued under the law to be amended by the bill are outstanding, the powers of public agency or legal entity
may not be impaired in such a way so as to adversely affect the rights of bond holders. Contracts or bond agreements related to the project constitute irrevocable contracts between the state and the bondholders or parties to the contracts which may not be impaired by the state.

Waiver of Sovereign Immunity

Any public agency or legal entity which participates in an electric project waives its sovereign immunity in relation to all other persons related to the project.

Exemption From Public Records Law

Materials supplied to public agencies or legal entities in connection with a project which are deemed by the supplier to be confidential or which has been determined to be confidential or secret by a court or regulatory agency will not be a "public record" for purposes of the public record law.

Valuation of Electric Utility Property

This section of the bill codifies existing case law relating to the valuation of condemned electric utility property. [See Dade County v. General Waterworks, 267 So. 2d 633, 641 (Fla. 1972). It should be noted that the method of valuation found in the bill apparently allows compensation for property contributed by the ratepayers.] The bill prohibits a legal entity from exercising the power of the eminent domain to acquire retail distribution facilities.

Person and Foreign Public Utility Defined

"Person" and "foreign public utility" is defined throughout the act so as to allow out of state corporation or firms to participate in joint projects.

FISCAL IMPACT

State Government

None
According to its proponents, the bill would enable legal entities and the municipal electric utilities in existence on June 25, 1975, which participate in them to more easily and economically finance electric projects using revenue bonds.

Public Sector

According to proponents, ratepayers of both publicly and privately owned electricity would benefit from lower rates for electricity due to the lowered capital costs associated with tax-exempt revenue bonds which will be used to finance the electric projects.

Private Sector

Investor-owned utilities may buy up to twenty-five percent of the electricity produced by the parts of the projects financed by the entity or public agencies' tax exempt revenue bonds under existing IRS regulations. Due to the lowered capital costs associated with these revenue bonds, the cost of the electricity should be cheaper than electricity produced in the investor-owned utility's own plants. Increased use of capacity financed by the legal entity or public agencies by the investor-owned-utilities, a result proponents of the bill foresee, should, to some extent, relieve cash flow problems associated with high capital costs that some investor-owned utilities experience.

COMMENTS

This bill, by amending the Joint Power Act, and by enumerating and authorizing certain types of provisions which may be placed in agreements of "joint entities" will allow municipal utilities (which existed as of June 25, 1975) to make greater use of their power to join together to finance various types of power projects. The main reason for this expansion will be that the bonds backed by these agreements will be safer investments. Also, because they are revenue bonds, the municipalities will not have to go the voters to seek approval of the bonds. Hopefully, local
governments will not overextend themselves or wind up issuing bonds for projects which are never built. This is apparently what happened to the Washington (State) Public Power Supply System recently when it attempted to build nuclear plants using local government revenue bond financing. When the projects began failing, the local governments were forced to put more and more money into them in order to save their initial investments. (See Peter W. Bernstein, "A Nuclear Fiasco Shakes the Bond Market", Fortune, February 22, 1982, pp. 100-115; Les Blumenthal (AP), "Washington Utility Sells Largest-ever Publicly Financed, Tax Exempt Bond Issue", St. Petersburg Times, March 13, 1982; Victor Zonana, "Rebellion Breaks Out in Northwest Over Skyrocketing Electricity Rates", Wall Street Journal, March 18, 1982, p. B-1)

It should be pointed out, however, that Florida differs from Washington in an important respect: Florida has a needs determination process. If a project is not needed in order to provide adequate service to customers, the Public Service Commission will not allow the joint entities to build the projects. Hopefully, this process will check any tendencies toward building unnecessary or uneconomical projects.

The expansion of municipal utilities into the fields of large scale generation and transmission capital financing may point to a new need to examine the current limits on PSC jurisdiction over municipal utilities generally and joint project utilities specifically.

REVIEWED: Staff Director
Committee on Energy
Date of meeting February 16, 1982
Time 1:30 p.m.
Place 214 Capitol

FINAL ACTION:

 Favorable
 Favorable with Amendments
 Favorable with Substitute
 Unfavorable

VOTE:

Yea  Member          Nay
Samuel P. Bell
Bobby Brantlev
Carl Carpenter
Roberto Casas
Charles Hall
Andy Johnson
Fred Jones
Scott McPherson
Reid Moore
Gene Ready
Larry Shackelford
James H. Smith, Jr
Daniel Webster
Dick Batchelor

Total Yeas 9
Total Nays 1

Chairman

COMMITTEE APPEARANCE RECORD

The following persons (other than legislators) appeared before the committee
during the consideration of this bill:

Name Representation
Fred Bryant FL Mun Utilities Assoc

Address
PO Box 3985
Tallahassee, FL

NOTE: Please indicate by an "X" any State employee appearing at the
request of Committee Chairman.

(If additional persons, enter on reverse side and check here)

File 2 copies with Clerk