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JAN 21 AM 10:23

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January 20, 2003

Division of Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: ~~Docket No. 021066-WS~~ Investigation Into the Proposed Sale of Florida Water Services Corporation: Request for Comments

Dear Sir or Madam:

Thank you for providing Citrus County (the "County") the opportunity to present its views concerning the legitimacy of the Florida Water Services Authority ("FWSA") as a "governmental authority" and the application of Chapter 367 to the FWSA.

As the Florida Public Service Commission ("FPSC") is no doubt aware, a multitude of lawsuits have been filed by local governments and customers of Florida Water Services Corporation ("Florida Water") challenging the legitimacy of the FWSA. Specifically, the lawsuits challenge, among other things, whether the creation of the FWSA by the Cities of Gulf Breeze and Milton is void ab initio in light of serious violations of the Constitutional prohibition against secret government meetings, as embodied in the Sunshine Law, section 286.001, Florida Statutes. For this reason and other reasons set forth in these comments and the exhibits hereto, the County shares the opinion of such local governments and customers of Florida Water that the FWSA was not lawfully created and, therefore, is not a governmental authority under Chapter 367, Florida Statutes.

Public records reveal that government officials from the Cities of Gulf Breeze and Milton, acting by and through their respective advisors, affirmatively took steps to conceal their scheme to create an alleged authority and acquire Florida Water's assets. For example, attached as Exhibit A is a copy of an email from FWSA's counsel, who also serves as counsel to the City of Gulf Breeze, Richard Lott, Esq., in which Mr. Lott states as follows:

We need to have the public hearing by Gulf Breeze within a few days of Sept. 13 approval. I suggest we advertise once 7 days prior, and once as soon as the FWSA is constituted. The optimal

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Handwritten signature

Done 1/23/03

Richard Wm. Wesch, Esq.
County Administrator

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

time to have the public hearing would be on the 16th of September.

Can you run the ad? **I hope we do not have to mention specifically that we are acquiring the "Florida Water Service Company" assets in the ad.** (emphasis added).

This email was sent to Matt Dannheisser, Esq., City Attorney to the City of Gulf Breeze and copied to the Gulf Breeze City Manager, Edwin Eddy. No public notice subsequently issued by the Cities of Gulf Breeze or Milton identified the acquisition of Florida Water assets as a topic for consideration despite the fact that the alleged interlocal agreement entered into between the Cities on September 17, 2002, was specifically designed to fulfill the Cities' intent to make such acquisition. Two days after the alleged creation of the FWSA, the FWSA authorized the acquisition of the largest private water utility in the State of Florida pursuant to a complex and intricate acquisition agreement. Clearly, the Cities and other advisors engaged in secret communications until all decisions necessary to implement their scheme were crystallized. Such secret meetings and scheming are precisely the type of actions which Florida's Constitutional and statutory laws are designed to prevent. The recognized sanction for such activity is that any action taken by the Cities and their advisors in violation of the Sunshine Law are void ab initio. The creation of the FWSA, therefore, is void and the FWSA is not a legally constituted governmental authority entitled to the exemption from or privileges granted by Chapter 367, Florida Statutes.

The FWSA also is not entitled to such exemptions or privileges since the authority which the Cities of Gulf Breeze and Milton attempt to create is not authorized under Chapter 163, Florida Statutes. The pertinent legislative history behind section 163.01(7)(g), Florida Statutes, is contained in the Staff Report which explains that

[C]h 163, F.S., regulates interlocal agreements, whereby cities or counties enter into agreements to provide services, or share expenses for services which their residents need. (emphasis added).

There are no Florida Water customers within the political boundaries of the Cities of Gulf Breeze or Milton. There are no Florida Water assets within the political boundaries of Gulf Breeze or Milton. The residents of Gulf Breeze and Milton receive their water and wastewater service from providers other than Florida Water. In short, the proposed acquisition by the illegally constituted FWSA would provide no needed services to the residents of either City. Rather, the FWSA acquisition of Florida Water is primarily motivated by profit for the Cities and their advisors.

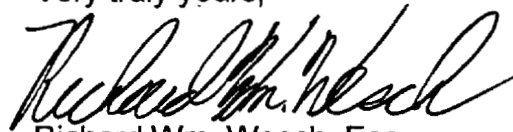
In order to avoid restating that which has been comprehensively and concisely established by many local governments in pending litigation to date, the County encloses as Exhibit B to these comments a copy of the reply of Osceola County to a Motion to Dismiss filed by the FWSA and Cities in Case No. C102-0C-2810 pending in the Circuit Court for the Ninth Judicial Circuit in and for Osceola County, Florida.

The County adopts the arguments raised by Osceola County in the attached pleading as support for the County's position that the FWSA is not a legally constituted governmental authority entitled to the exemption and privileges provided to governmental authorities pursuant to Chapter 367, including the privilege to have the proposed transfer of Florida Water assets to the FWSA approved by the FPSC as a matter of right.

Finally, the County has provided herewith a copy of SB140, a bill sponsored by Senator Nancy Argenziano, attached as Exhibit C. The County supports this legislation and urges the FPSC to join the County in support of SB140. This legislation reflects good public policy by requiring public notice to local governments effected by transactions such as the one proposed by FWSA and, we believe, clarifies the legislative intent to provide transition of private utilities into local government control.

Again, we thank you for your invitation to comment. Please do not hesitate to contact us if further information or comment is required.

Very truly yours,



Richard Wm. Wesch, Esq.
County Administrator

RWW:ba
Exhibits A, B, C

xc: Senator Nancy Argenziano
Senator Mike Fasano
Representative Charles Dean
✓ Office of General Counsel
Board of County Commissioners
Kenneth E. Saunders, Jr., Assistant County Administrator

EXHIBIT A

Email From Richard Lott, September 5, 2002

From: "Ed Gray, III" < >
To: "Richard Lott" < >, "Matt Dannheisser (E-mail)" < >
Cc: "Buz Eddy (E-mail)" < >
Date: Thu, 5 Sep 2002 08:04:53 -0500
Subject: Re: notice of public hearing for fws

I have some concerns about running an ad when we seem to have some council members uneasy about the deal.

----- Original Message -----

From: "Richard Lott" < >
To: "Matt Dannheisser (E-mail)" < >
Cc: "ED, III GRAY (E-mail)" < >; "Buz Eddy (E-mail)" < >
Sent: Thursday, September 05, 2002 3:09 AM
Subject: notice of public hearing for fws

Matt,

We need to have the public hearing by Gulf Breeze within a few days of the Sept 13 approval. I suggest we advertise once 7 days prior, and once as soon as the FWSA is constituted. The optimal time to have the public hearing would be on the 16th of September.

I am in Jacksonville for my checkup at Mayo Clinic. Can you run the ad? I hope we do not have to mention specifically that we are acquiring the "Florida Water Service Company" assets in the ad.

LAW OFFICES OF
MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.
A PROFESSIONAL LIMITED LIABILITY COMPANY
25 WEST CEDAR STREET, SUITE 500
PENSACOLA, FLORIDA 32501

850/469-1088
TELECOPY 850/432-0677

EXHIBIT B

**Reply of Osceola County to a Motion to Dismiss Filed
By the FWSA and Cities in Case No. C102-0C-2810**

To Be Provided.

EXHIBIT C
Senate Bill 140

By Senator Argenziano

3-234-03

1 A bill to be entitled
2 An act relating to the Florida Interlocal
3 Cooperation Act of 1969; amending s. 163.01,
4 F.S.; requiring notification of the host
5 government if a separate legal entity seeks to
6 acquire public facilities serving populations
7 outside the jurisdiction of members of the
8 separate legal entity; providing for the host
9 government to respond within a specified
10 period; providing that the host government may
11 not prohibit such acquisition if it fails to
12 respond within the specified period; defining
13 the governing body constituting the host
14 government for purposes of the act; authorizing
15 the host government to reserve the right to
16 review and approve rates, charges, and customer
17 classifications; providing certain limitations;
18 providing for retroactive application;
19 providing an effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Paragraph (g) of subsection (7) of section
24 163.01, Florida Statutes, is amended to read:

25 163.01 Florida Interlocal Cooperation Act of 1969.--
26 (7)

27 (g)1. Notwithstanding any other provisions of this
28 section, any separate legal entity created under this section,
29 the membership of which is limited to municipalities and
30 counties of the state, may acquire, own, construct, improve,
31 operate, and manage public facilities, or finance facilities

1 on behalf of any person, relating to a governmental function
2 or purpose, including, but not limited to, wastewater
3 facilities, water or alternative water supply facilities, and
4 water reuse facilities, which may serve populations within or
5 outside of the members of the entity. Notwithstanding s.
6 367.171(7), any separate legal entity created under this
7 paragraph is not subject to commission jurisdiction and may
8 not provide utility services within the service area of an
9 existing utility system unless it has received the consent of
10 the utility. A separate legal entity that seeks to acquire any
11 public facilities that serve populations outside of the
12 jurisdiction of members of the entity must notify in writing
13 each host government of the contemplated acquisition prior to
14 any transfer of ownership, use, or possession of any utility
15 assets to such separate legal entity. The potential
16 acquisition notice must be provided in writing to the
17 legislative head of the governing body of the host government
18 and its chief administrative officer and provide the name and
19 address of a contact person of the separate legal entity for
20 the receipt of information on the contemplated acquisition.
21 Within 45 days following receipt of the notice, the host
22 government may adopt a membership resolution indicating its
23 intent to become a member of the separate legal entity, a
24 prohibition resolution to prohibit the acquisition by the
25 separate legal entity of public facilities within its
26 jurisdiction, an approval resolution prescribing any
27 restrictions on the proposed acquisition required by the host
28 local government, or take no action of any kind. If a host
29 government adopts a membership resolution, the separate legal
30 entity shall accept the host government as a member prior to
31 any transfer of ownership, use, or possession of the public

1 facilities on the same basis as its existing members. If a
2 host government adopts a prohibition resolution, the separate
3 legal entity may not acquire the public facilities within such
4 host government's territory without specific consent of the
5 host government by future resolution. If a host government
6 does not adopt a membership resolution, a prohibition
7 resolution, or an approval resolution, the separate legal
8 entity may proceed to acquire the public facilities after the
9 45-day notice period without further notice, except as
10 otherwise agreed upon by the separate legal entity and the
11 host government. The host government may not prohibit the
12 acquisition of such public facilities if it has not responded
13 to the legal entity within the 45-day notice period. For
14 purposes of this paragraph, a "host government" is the
15 governing body of the county if a majority of the retail
16 utility customers to be served by the acquired public
17 facilities within the county reside in the unincorporated
18 area, or is the governing body of a municipality if the
19 majority of the retail utility customers to be served by the
20 acquired public facilities reside within the municipal
21 boundaries. Any host government may, in its adoption of an
22 approval resolution or a membership resolution or by
23 resolution adopted subsequent to the closing of an
24 acquisition, reserve the right to review and approve as fair
25 and reasonable the rates, charges, and customer
26 classifications adopted by the separate legal entity for the
27 use of the acquired public facilities within the jurisdiction
28 of the host local government. Such right of rate review and
29 approval by the host local government is subject to the
30 obligation of the separate legal entity to establish rates and
31 charges that comply with the requirements contained in any

1 resolution or trust agreement relating to the issuance of
2 bonds to acquire and improve the affected public facilities
3 and such right does not affect the obligation of the separate
4 legal entity to set rates at a level sufficient to pay debt
5 service on its obligations issued in relation to the affected
6 public facilities. This paragraph is an alternative provision
7 otherwise provided by law as authorized in s. 4, Art. VIII of
8 the State Constitution for any transfer of power as a result
9 of an acquisition of public facilities by a separate legal
10 entity from a municipality, county, or special district.The
11 entity may finance or refinance the acquisition, construction,
12 expansion, and improvement of such facilities relating to a
13 governmental function or purpose through the issuance of its
14 bonds, notes, or other obligations under this section or as
15 otherwise authorized by law. The entity has all the powers
16 provided by the interlocal agreement under which it is created
17 or which are necessary to finance, own, operate, or manage the
18 public facility, including, without limitation, the power to
19 establish rates, charges, and fees for products or services
20 provided by it, the power to levy special assessments, the
21 power to sell or finance all or a portion of such facility,
22 and the power to contract with a public or private entity to
23 manage and operate such facilities or to provide or receive
24 facilities, services, or products. Except as may be limited by
25 the interlocal agreement under which the entity is created,
26 all of the privileges, benefits, powers, and terms of s.
27 125.01, relating to counties, and s. 166.021, relating to
28 municipalities, are fully applicable to the entity. However,
29 neither the entity nor any of its members on behalf of the
30 entity may exercise the power of eminent domain over the
31 facilities or property of any existing water or wastewater

1 | plant utility system, nor may the entity acquire title to any
2 | water or wastewater plant utility facilities, other
3 | facilities, or property which was acquired by the use of
4 | eminent domain after the effective date of this act. Bonds,
5 | notes, and other obligations issued by the entity are issued
6 | on behalf of the public agencies that are members of the
7 | entity.

8 | 2. Any entity created under this section may also
9 | issue bond anticipation notes in connection with the
10 | authorization, issuance, and sale of bonds. The bonds may be
11 | issued as serial bonds or as term bonds or both. Any entity
12 | may issue capital appreciation bonds or variable rate bonds.
13 | Any bonds, notes, or other obligations must be authorized by
14 | resolution of the governing body of the entity and bear the
15 | date or dates; mature at the time or times, not exceeding 40
16 | years from their respective dates; bear interest at the rate
17 | or rates; be payable at the time or times; be in the
18 | denomination; be in the form; carry the registration
19 | privileges; be executed in the manner; be payable from the
20 | sources and in the medium or payment and at the place; and be
21 | subject to the terms of redemption, including redemption prior
22 | to maturity, as the resolution may provide. If any officer
23 | whose signature, or a facsimile of whose signature, appears on
24 | any bonds, notes, or other obligations ceases to be an officer
25 | before the delivery of the bonds, notes, or other obligations,
26 | the signature or facsimile is valid and sufficient for all
27 | purposes as if he or she had remained in office until the
28 | delivery. The bonds, notes, or other obligations may be sold
29 | at public or private sale for such price as the governing body
30 | of the entity shall determine. Pending preparation of the
31 | definitive bonds, the entity may issue interim certificates,

1 | which shall be exchanged for the definitive bonds. The bonds
2 | may be secured by a form of credit enhancement, if any, as the
3 | entity deems appropriate. The bonds may be secured by an
4 | indenture of trust or trust agreement. In addition, the
5 | governing body of the legal entity may delegate, to an
6 | officer, official, or agent of the legal entity as the
7 | governing body of the legal entity may select, the power to
8 | determine the time; manner of sale, public or private;
9 | maturities; rate of interest, which may be fixed or may vary
10 | at the time and in accordance with a specified formula or
11 | method of determination; and other terms and conditions as may
12 | be deemed appropriate by the officer, official, or agent so
13 | designated by the governing body of the legal entity. However,
14 | the amount and maturity of the bonds, notes, or other
15 | obligations and the interest rate of the bonds, notes, or
16 | other obligations must be within the limits prescribed by the
17 | governing body of the legal entity and its resolution
18 | delegating to an officer, official, or agent the power to
19 | authorize the issuance and sale of the bonds, notes, or other
20 | obligations.

21 | 3. Bonds, notes, or other obligations issued under
22 | subparagraph 1. may be validated as provided in chapter 75.
23 | The complaint in any action to validate the bonds, notes, or
24 | other obligations must be filed only in the Circuit Court for
25 | Leon County. The notice required to be published by s. 75.06
26 | must be published in Leon County and in each county that is a
27 | member of the entity issuing the bonds, notes, or other
28 | obligations, or in which a member of the entity is located,
29 | and the complaint and order of the circuit court must be
30 | served only on the State Attorney of the Second Judicial
31 | Circuit and on the state attorney of each circuit in each

1 county that is a member of the entity issuing the bonds,
2 notes, or other obligations or in which a member of the entity
3 is located. Section 75.04(2) does not apply to a complaint for
4 validation brought by the legal entity.

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

22 Section 2. The acquisition requirements contained in
23 the amendments to section 163.01(7)(g)1., Florida Statutes,
24 provided in this act which condition the acquisition by a
25 separate legal entity of public facilities that serve
26 populations outside of the members of the entity on the
27 provision by such separate legal entity of a potential
28 acquisition notice to all host governments and on the granting
29 to a host government the opportunity to adopt a membership
30 resolution, a prohibition resolution, or an approval
31 resolution shall be retroactively applied and substantial

1 compliance with such acquisition requirements shall be a
2 specific condition of any acquisition subsequent to September
3 1, 2002, of public facilities by a separate legal entity
4 created by interlocal agreement pursuant to section
5 163.01(7)(g)1., Florida Statutes, pursuant to an acquisition
6 agreement entered into prior or subsequent to September 1,
7 2002.

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

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SENATE SUMMARY

Provides a procedure by which a separate legal entity may acquire public facilities serving populations outside the jurisdiction of members of the separate legal entity. Requires that the county or municipality be notified of the contemplated acquisition. Requires that the county or municipality respond within 45 days following the notice. Authorizes the county or municipality to reserve the right to review and approve rates, charges, and customer classifications. Provides for the act to apply retroactively to September 1, 2002. (See bill for details.)