

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20030645

1. REQUESTED MOTION:

ACTION REQUESTED: 1. Conduct a public hearing pursuant to Section 125.3401, F.S., to consider the adoption of a County Resolution of Authorization for the County's proposed defeasing of outstanding bonds for the Gulf Environmental Systems' ("GES") water and wastewater facilities, associated lands and customers, located within the GES franchise area, Lee County, Florida. 2. Approve and authorize the Chairman to execute Transfer of Assets documents with GES for the County's acquisition of its water and wastewater infrastructure lying within the GES franchise area of Lee County. 3. Consider, approve and authorize the incorporation of the GES water and wastewater facilities, associated lands and customers into the Lee County Utilities' consolidated utility system as a part of that System upon the County's closing the GES on the System, currently scheduled to be Monday, June 30, 2003. 4. Consider, approve and authorize the application of the then-adopted Lee County Utility rates, fees and charges, to the GES customers within the GES franchise as of October 1, 2003, with the "October, 2003" billing by Lee County Utilities. 5. Authorize the Chairman or the Vice-Chairman and County staff and consultants to perform all additional lawfully necessary actions and execute all required documents consistent with the Board's directions for the acquisition of, and closing on, the GES water and wastewater infrastructure, associated lands and customers within the GES franchise area of Lee County.

WHY ACTION IS NECESSARY: Board of County Commissioners' approvals are required for the County's acquisition of a water and wastewater utility system, pursuant to General Law (Section 125.3401, F.S.).

WHAT ACTION ACCOMPLISHES: Provides the appropriate forum for the necessary, required approvals and authorizations for the County to continue with the process for the closing on the acquisition of the water and wastewater treatment infrastructure, associated lands and customers owned by GES, within the GES franchise area of Lee County.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT #

5:00 #4

3. MEETING DATE:

06-10-2003

4. AGENDA:

CONSENT

ADMINISTRATIVE

APPEALS

X PUBLIC

WALK ON

TIME REQUIRED:
30 minutes

5. REQUIREMENT/PURPOSE:

(Specify)

X STATUTE §125.3401, F.S.

ORDINANCE

ADMIN. CODE

X OTHER I.R.S. Ruling
63-20

6. REQUESTOR OF INFORMATION:

A. COMMISSIONER

B. DEPARTMENT County Attorney

C. DIVISION General Services

BY: David M. Owen

Chief Assistant County Attorney

7. BACKGROUND:

(BACKGROUND - NEXT PAGE)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
N/A	N/A	N/A	N/A	15 5/28/03	OA	OM	RISK	GC	5-29-03
					RA for 5/28/03	5/28/03	5/28/03	5/28/03	

10. COMMISSION ACTION:

- _____ APPROVED
- _____ DENIED
- _____ DEFERRED
- _____ OTHER

RECEIVED BY COUNTY ADMIN. RA
5-28-03
11/15
COUNTY ADMIN. FORWARDED TO: DS
5/29/03

BACKGROUND:

- December, 1997**
- a) Gulf Environmental Services, Inc. ("GES") is incorporated (created) as a not-for-profit corporation pursuant to Section 501(c)(3), I.R.C. and Internal Revenue Rulings 59-41 and 63-20, for the purpose of acquiring Gulf Utility Company, Inc. ("Gulf Utilities"), in south Lee County.
 - b) Lee County staff is approached by representatives of GES concerning the nature of the proposed acquisition of Gulf Utilities by GES and the adoption of an "Inducement Resolution" by the Board of County Commissioners to begin the process as contemplated by Internal Revenue Ruling No. 63-20.
- January to March, 1998**
- GES and County staff negotiate terms and revise County "Inducement Resolution" for GES acquisition of Gulf Utilities.
- March 31, 1998**
- The Board of County Commissioners adopts Lee County Resolution No. 98-03-249 (attached) at a regularly scheduled meeting, giving preliminary, conditional and limited approval to GES for its proposed plans of finance and acquisition for the Gulf Utilities acquisition, and agreeing to take title to the GES assets, land and customers once acquired by GES pursuant to the terms of Revenue Ruling No. 63-20.
- April to May, 1998**
- County staff, GES representatives and STES representatives negotiate and develop the several instruments necessary for the acquisition of Gulf Utilities by GES and the documents necessary for the interface between the Board of County Commissioners and GES once Gulf Utilities is acquired, to wit: County franchise for GES to conduct the Utility's business in Lee County, adoption by GES of Lee County Utilities then-applicable rates, and creation of the operations contract by GES with STES.
- May 19, 1998**
- The Board of County Commissioners grants approval to staff at a regularly scheduled meeting to set a public hearing for Tuesday, June 9, 1998 at 5:00 p.m. to consider the adoption of a Resolution granting final approval to GES' plans of finance and acquisition, franchise, Operations Agreement, Bond Resolution, Board of Directors, and public briefing document pursuant to Section 125.3401, F.S..
- June 9, 1998**
- The Board of County Commissioners adopts Lee County Resolution No 98-06-18 (attached), at a duly noticed public hearing (5:00 p.m.) granting final approvals to GES for its plans of finance and acquisition, franchise, Operations Agreement, Bond Resolution, Board of Directors, and public purpose, pursuant to Section 125.3401, F.S..
- June 30, 1998**
- GES closes on its \$53,750,000.00 Water and Sewer System Revenue Bonds, Series 1998, and closes on the purchase and sale of Gulf Utility Company Inc..
- July, 1998 to November, 2002**
- GES owns and operates the former Gulf Utility Company water and wastewater utility within its County-granted franchise area.
- November 19, 2002**
- The Board of County Commissioners, at a regularly scheduled meeting, grants authorization to County staff to proceed with the transition of the GES assets, real property and customers to the County pursuant to Internal Revenue Ruling No. 63-20 (attached).

BACKGROUND:

- December, 2002 to May, 2003** - County staff and consultants (engineering and financial) interact with GES representatives for the development of the necessary documents to: a) issue the County's bonds for the defeasance of the GES bonded debt, and close on the transition of the GES assets (facilities, real property and customers) to the County, on June 30, 2003.

- May 27, 2003** - The Board of County Commissioners adopts Lee County Resolution No. 03-05-37 at a regularly scheduled Board meeting authorizing the County's issuance of its Water and Sewer Refunding Revenue Bonds Series 2003A in the amount of \$56,260,000.00 and Series 2003B in the amount of \$8,505,000.00, and the execution of the Bond Purchase Agreement for the sale of said bonds (attached), to defease the GES bonds pursuant to Internal Revenue Ruling No. 63-20 and provide funding for immediate improvements and expansion to the System, once transitioned.

Under the Internal Revenue Ruling No. 63-20, when a private, not-for-profit utility corporation meets certain conditions, its bonds will be considered public (tax-exempt), if:

- a) the corporation engages in public activities,
- b) no income of the corporation goes to any private person,
- c) a local government has a beneficial interest in the corporation while indebtedness is outstanding and assumes full title to the property (assets of the corporation) when the indebtedness is "retired", and
- d) the financial obligations (bond indebtedness) have been approved by the local beneficiary government.

The retirement of the debt for purposes of taking title to all of the assets of the 63-20 corporation may be accomplished in one of three ways at the sole election of the local beneficiary government:

- a) upon the full payment of the corporation's debt (discharge), at the conclusion of the term of the bonds issued,
- b) assumption of the corporation's debt as issued by the corporation at any time, or
- c) defeasance of the corporation's debt by issuance of the local beneficiary government's bonds at any time.

In November, 2002, County staff and consultants (financial and engineering), made a determination that June, 2003 would be an appropriate time for the County to exercise the third option under Ruling No. 63-20 as outlined above, for the transfer of the GES assets to the County.

BACKGROUND:

All of the same reasonings, terms and conditions for such transfer continue to remain in effect as of this date and are still recommended by administrative and legal staff.

Further to the Section 125.3401, F.S., public hearing held by the Board on June 9, 1998, the Board is now requested to adopt the attached Resolution authorizing the transfer of the GES assets to Lee County on June 30, 2003 pursuant to law (Section 125.3401, F.S.) and Internal Revenue Ruling No. 63-20.

REQUESTED ACTION:

Request the Board to approve and authorize the Chairman's signature on the proposed Resolution and also authorize the Chairman or Vice-Chairman to accept and execute all closing documents for the transition of the GES assets to the County, as may be appropriate.

Upon the closing of the transaction on June 30, 2003, the Gulf Environmental Services, Inc. corporation will be dissolved pursuant to its Articles of Incorporation, and its Board of Directors, discharged.

LEE COUNTY RESOLUTION NO. 98-03-249

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, PRELIMINARILY APPROVING A PROPOSED PLAN OF FINANCING OF THE COST OF THE ACQUISITION OF AN EXISTING WATER AND WASTEWATER FACILITY AND THE ACQUISITION AND CONSTRUCTION OF ADDITIONAL WATER AND WASTEWATER DISTRIBUTION, COLLECTION AND TRANSMISSION FACILITIES IN LEE COUNTY BY GULF ENVIRONMENTAL SERVICES, A CORPORATION NOT-FOR-PROFIT ORGANIZED UNDER THE LAWS OF THE STATE OF FLORIDA; AGREEING TO ACCEPT A GRANT OF TITLE TO SUCH FACILITIES UPON RETIREMENT OF THE BONDS TO BE ISSUED PURSUANT TO SUCH PLAN UPON SATISFACTION OF CERTAIN CONDITIONS BY THE CORPORATION; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (the "Board") of Lee County, Florida (the "County") is advised by representatives of Gulf Environmental Services, Inc. (the "Corporation"), that the Corporation is a Florida not-for-profit corporation organized and existing pursuant to the provisions of the laws of the State of Florida for the purpose of providing water and wastewater services and facilities in Lee County; and,

WHEREAS, the County is interested in acquiring the assets of Gulf Utility Company through condemnation, if necessary, and utilizing the Corporation for purposes of accomplishing such acquisition, as described herein; and,

WHEREAS, the Corporation intends to acquire the assets of Gulf Utility

Company, an existing water and wastewater facility in the County, and to construct additional water and wastewater facilities located in the County (the "Project"); and,

WHEREAS, the Corporation has advised the County that it is duly authorized to borrow money for lawful corporate purposes and to issue and sell its bonds for money so borrowed and to pledge the revenues of the Project in order to secure the payment of such bonds; and,

WHEREAS, in order to finance the cost of acquisition, construction and equipping of the Project, the Corporation deems it advisable to borrow money and to issue its Utility Revenue Bonds, Series 1998 (the "Bonds") and to pledge as security for the Bonds, the revenues to be derived from the operation thereof; and,

WHEREAS, the Bonds shall be special obligations of the Corporation payable from revenues of the Project, all as shall be provided in accordance with the terms of an Indenture of Trust (the "Indenture") to be executed between the Corporation and a trust company or bank having trust powers (the "Trustee"); and,

WHEREAS, the proceeds from the sale of the Bonds shall be used only for the specific corporate purpose of providing funds to finance the cost of the Project, to fund a reserve fund, if necessary, and to pay the expenses of issuing the Bonds, and the Corporation has not made and does not intend to make any profit by reason of any business or venture in which it may engage or by reason of the acquisition of the Project and its subsequent operation, and no part of the net earnings of the Corporation, if any, will inure to the benefit of any private person, firm or corporation; and,

WHEREAS, the Corporation has retained as Bond Counsel the firm of Bryant, Miller and Olive, P.A., to serve as Bond Counsel; and,

WHEREAS, the Corporation has advised the County that the authority and powers of the Corporation shall be vested in a governing body which is interested in the general health and welfare of the citizens and inhabitants within the County in the area previously designated as the Florida Public Service Commission certificated service area of the Gulf Utility Company, in Lee County, Florida; and,

WHEREAS, the transaction contemplates and provides an arrangement whereby all of the rights, title and interest of the Corporation in and to all the real and personal property constituting the Project shall vest unencumbered in the County upon discharge, defeasance, or to the extent permitted by law, assumption of the Bonds, and it is appropriate at this time that the County declare its preliminary intention to cooperate in such transaction upon the terms and conditions hereinafter set forth; and,

WHEREAS, the Corporation has requested the County to indicate its preliminary approval in this matter in order to induce the Corporation to proceed with such Project and incur expenses for its initiation and its financing upon the terms and conditions hereof.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that:

SECTION 1. APPROVAL OF BONDS. Subject to satisfaction of all of the conditions as described in Section 4. hereof, and the establishment of rates and charges sufficient to repay the Bonds; the issuance and sale of the Bonds and by the

Corporation for the purposes described in the foregoing recitals in an aggregate principal amount estimated not to exceed \$55,000,000, is hereby approved.

SECTION 2. APPROVAL OF ISSUER. Subject to satisfaction of all of the conditions as described in Section 4. hereof, the acquisition, construction and equipping of the Project, and the purposes and activities of the Corporation as described in the foregoing recitals are hereby approved.

SECTION 3. TITLE TO PROJECT. Subject to satisfaction of all of the conditions as described in Section 4. hereof, the County hereby agrees to accept unencumbered title to all real and personal property constituting the Project upon the discharge, defeasance, or to the extent permitted by law, assumption of the Bonds.

SECTION 4. CONDITIONS FOR FINAL APPROVAL. The approvals and consents described above are subject to satisfaction of the following conditions, and shall constitute conditions precedent to the issuance of Bonds by the Corporation:

- (A) The County shall receive a study or report from an engineering firm relating to the feasibility and condition of the Project and the rates to be imposed for the services and products of the Project which shall in all respects be acceptable to the County.
- (B) The County shall receive the Indenture pursuant to which the Bonds shall be issued which shall be acceptable to the County in all respects.
- (C) The County shall receive the Management Contract

between the Corporation and the entity which shall manage the Project which shall be acceptable to the County in all respects.

- (D) The Board of Directors and officers of the Corporation shall be acceptable to the County.
- (E) Title documents relating to the Project shall be held in escrow by the Trustee under the Indenture and shall be acceptable to the County.
- (F) Such other documents as the County may request shall be received and shall be in a form acceptable to the County.
- (G) The Board shall give final approval to the Project and plan of financing.

In the event any one of the aforementioned conditions is not satisfied or accepted by the County, the preliminary approvals and consents granted herein shall be void ab initio, and the County shall have no obligation to proceed with the Project nor the financing thereof and shall have no obligation (pecuniary or otherwise) to the Corporation or any agents, attorneys, consultants or employees thereof for any expenses incurred by them.

SECTION 5. LIMITED APPROVAL. The preliminary approvals and consents given herein shall not be construed as an approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use, nor approval for any other regulatory permits relating to the Project, and the Board

shall not be construed by reason of its adoption of this Resolution to have waived any right of the Board, or estopping the Board from asserting any rights or responsibilities it may have in such regard. Further, the preliminary approval by the Board of the issuance of the Bonds by the Corporation shall not be construed to obligate the County to incur any liability, pecuniary or otherwise, in connection with either the issuance of the Bonds or the acquisition and construction of the Project, and the Corporation shall so provide in the financing documents setting forth the details of the Bonds. Finally, the County shall not be construed by reason of its adoption of this Resolution to (a) attest to the Corporation's ability to repay the indebtedness represented by the Bonds or (b) constitute a recommendation to prospective purchasers of the Bonds to purchase the same.

SECTION 6. NO OBLIGATION OF COUNTY. Nothing herein contained shall be construed to create any obligation, direct, indirect or contingent, on the part of the County to pay any part of the cost of the Project, or any expense of the operation or *maintenance of the Project or of such financing, or to pay the principal of and/or* interest on any such proposed Bonds as may be issued by the Corporation, or to accept, operate or maintain the Project either in the event of default or failure by the Corporation.

SECTION 7. EFFECTIVE DATE. This Resolution shall become effective immediately upon its adoption by the Board of County Commissioners at a regular meeting.

The foregoing Resolution was offered by Commissioner Judah, who moved its adoption. The motion was seconded by Commissioner Albion and, being put to a vote, the vote was as follows:

DOUGLAS ST. CERNY	<u>AYE</u>
JOHN MANNING	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
ANDREW COY	<u>AYE</u>
JOHN E. ALBION	<u>AYE</u>

DULY PASSED AND ADOPTED this 31st day of March, 1998.

ATTEST:
CHARLIE GREEN, CLERK

By: 

Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: 

Chairman

APPROVED AS TO FORM:

By: 

Office of the County Attorney

LEE COUNTY RESOLUTION NO. 98-06-18

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, GRANTING FINAL APPROVAL TO A PROPOSED PLAN OF FINANCE FOR THE COST OF THE ACQUISITION OF AN EXISTING WATER AND WASTEWATER FACILITY KNOWN AS GULF UTILITY COMPANY AND THE ACQUISITION AND CONSTRUCTION OF ADDITIONAL WATER AND WASTEWATER DISTRIBUTION, COLLECTION AND TRANSMISSION FACILITIES IN LEE COUNTY BY GULF ENVIRONMENTAL SERVICES, INC., A CORPORATION NOT-FOR-PROFIT ORGANIZED UNDER THE LAWS OF THE STATE OF FLORIDA; AGREEING TO ACCEPT A GRANT OF TITLE TO SUCH FACILITIES UPON THE RETIREMENT OF THE BONDS TO BE ISSUED PURSUANT TO SUCH PLAN UPON SATISFACTION OF CERTAIN CONDITIONS PRECEDENT BY THE CORPORATION; PROVIDING FOR PUBLIC INTEREST FINDINGS PER F.S. SEC. 125.3401; PROVIDING FOR APPROVAL OF A FRANCHISE AGREEMENT AND TARIFFS AND POLICIES; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners (the "Board") of Lee County, Florida (the "County") adopted Lee County Resolution No. 98-03-249 on March 31, 1998; and

WHEREAS, in Lee County Resolution No. 98-03-249, the County gave its preliminary approval to (a) the Bonds (as defined therein), (b) Gulf Environmental

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6/9/98 5:04

Services, Inc. (the "Corporation"), including its purposes and activities, (c) accepting unencumbered title to all real and personal property constituting the Project (as defined therein) upon the discharge, defeasance, or to the extent permitted by law, assumption of the Bonds; and

WHEREAS, the conditions for final approval by the County, as set forth in Lee County Resolution No. 98-03-249, have been satisfied; and

WHEREAS, the Board has held a public hearing pursuant to Section 125.3401, Florida Statutes (1997), and received public input on the Corporation's purchase of the water and wastewater assets of Gulf Utility Company, and wishes to make a determination that the purchase serves a public purpose and is in the public interest.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, that:

SECTION 1. ADOPTION OF PUBLIC BRIEFING DOCUMENT.

The County adopts and accepts into the record the Public Briefing Document prepared by Gulf Environmental Services, Inc. pursuant to Section 125.3401, Florida Statutes (1997) (Exhibit "A" hereto)

SECTION 2. TRANSACTION SERVES A PUBLIC PURPOSE. The conditions and requirements of Section 125.3401, Florida Statutes (1997) having

been satisfied, the County finds the Project, as defined in Lee County Resolution 98-03-249, serves a public purpose and is in the public interest. Specifically, Gulf Environmental Services, Inc.'s acquisition, ownership, maintenance, and operation of the water and wastewater utility assets owned by Gulf Utility Company is necessary and desirable to maintain and improve the quality of public water supply and sanitary wastewater utility service as provided to residents who live, work, or visit within the County. In determining that the purchase, as heretofore described, serves a public purpose and is in the public interest, the County considered information including, but not limited to, the following:

- (a) The most recent available income and expense statement for Gulf Utility Company;
- (b) The most recent available balance sheet for Gulf Utility Company, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;
- (c) A statement of the existing rate base of Gulf Utility Company for regulatory purposes;
- (d) The physical condition of Gulf Utility Company's facilities being purchased;
- (e) The reasonableness of the purchase price and terms;
- (f) The impact of the purchase on Gulf Utility Company's customers, both positive and negative;
- (g) Any additional investment required and the ability and willingness

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of the Corporation to make that investment;

(h) The alternatives to the purchase and the potential impact on Gulf Utility Company's customers if the purchase is not made; and

(i) The ability of the Corporation to provide and maintain high-quality and cost effective utility service.

SECTION 3. CONFIRMATION AND APPROVAL OF BOARD OF DIRECTORS. *The County confirms, and approves of, the Corporation's Board of Directors.*

SECTION 4. APPROVAL OF BOND RESOLUTION. *The County approves the Bond Resolution (Exhibit "B" hereto) for the issuance of the Bonds of the Corporation, with such changes, insertions and deletions thereto as do not change the substance of such Bond Resolution.*

SECTION 5. FINAL APPROVAL GRANTED. *The conditions for final approval set forth in Lee County Resolution 98-03-249 having been satisfied, the County grants its final approval to (a) the issuance and sale of the Bonds by the Corporation; (b) the execution of all documents necessary to finance and close the transaction, including, but not limited to, the Bond Resolution, Preliminary Official Statement and other documents in substantially final form; (c) the Corporation, including its purposes and activities, and its acquisition of the assets of Gulf Utility Company; (d) construction and equipping of the Project; and (e)*

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accepting unencumbered title to all real and personal property constituting the Project, including any additions to the Project, upon the discharge, defeasance, or to the extent permitted by law, assumption of the Bonds.

SECTION 6. APPROVAL OF FRANCHISE AGREEMENT. The County approves the granting of a Franchise to the Corporation. (Exhibit "C" hereto).

SECTION 7. APPROVAL OF TARIFFS AND SERVICE AVAILABILITY POLICIES. The County approves the Water Tariff and Wastewater Tariff of the Corporation, including the Service Availability Policies set forth therein. (Exhibit "D" hereto).

SECTION 8. FURTHER ACTION. The Board is authorized to execute any and all further documents, and take all such action, as may be necessary to close the acquisition by Gulf Environmental Services, Inc. of the assets of Gulf Utility Company including, but not limited to, executing any agreements relating to acceptance by the Board of unencumbered title to the assets of Gulf Environmental Services, Inc.

SECTION 9. CONDEMNATION. This action is being undertaken in lieu of the initiation of condemnation proceedings by the County, and under threat of condemnation by the County of the assets of Gulf Utility Company.

SECTION 10. LIMITED APPROVAL. The approvals and consents given herein shall not be construed as an approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use, nor approval for any other regulatory permits relating to the Project, and the Board shall not be construed by reason of its adoption of this Resolution to have waived any right of the Board, or estopping the Board from asserting any rights or responsibilities it may have in such regard. Further, the approval by the Board of the issuance of the Bonds by the Corporation shall not be construed to obligate the County to incur any liability, pecuniary or otherwise, in connection with either the issuance of the Bonds or the acquisition and construction of the Project, and the Corporation shall so provide in the financing documents setting forth the details of the Bonds. Finally, the County shall not be construed by reason of its adoption of this Resolution to (a) attest to the Corporation's ability to repay the indebtedness represented by the Bonds, or (b) constitute a recommendation to prospective purchasers of the Bonds to purchase the same.

SECTION 11. NO OBLIGATION OF COUNTY. Nothing herein contained shall be construed to create any obligation, direct, indirect or contingent, on the part of the County to pay any part of the cost of the Project, or any expense of the operation or maintenance of the Project or of such financing, or to pay the principal of and/or interest on any such proposed Bonds as may be issued by the Corporation, or to accept, operate or maintain the Project either in the event of

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default or failure by the Corporation.

SECTION 12. EFFECTIVE DATE. This Resolution shall become effective immediately upon its adoption by the Board.

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The foregoing Resolution was offered by Commissioner St. Cerny
who moved its adoption. The motion was seconded by Commissioner Albion
and, being put to a vote, the vote was as follows:

DOUGLAS ST. CERNY	<u>AYE</u>
JOHN MANNING	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
ANDREW COY	<u>AYE</u>
JOHN E. ALBION	<u>AYE</u>

DULY PASSED AND ADOPTED THIS 9TH DAY OF JUNE, 1998.

ATTEST:
CHARLIE GREEN, CLERK

By: Charlie Green
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: John Manning
Chairman

APPROVED AS TO FORM:

By: James Gujer
Office of the County Attorney

lee\evr\galf\county3.ms

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LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY **BLUE SHEET NO: 20021096-UTL**

1. REQUESTED MOTION:

ACTION REQUESTED:

Authorize staff to commence procedures and all necessary steps for Lee County to assume the assets and refinance the bonded debt of Gulf Environmental Services, Inc. (GES), with a county bond issue, pursuant to I.R.C. Ruling 63-20.

WHY ACTION IS NECESSARY:

Board approval is required for County acquisition of utilities and bonded debt obligations. A public hearing, per F.S. Title XI, Chapter 125.3401, is also required and will be scheduled prior to final Board approval.

WHAT ACTION ACCOMPLISHES:

Provides staff with BOCC authorization to proceed with the acquisition and coordination for the organized and effective transition of the assumption and in-house operation of the GES utilities facilities and infrastructure, per I.R.C. Ruling 63-20.

2. DEPARTMENTAL CATEGORY: 10 - UTILITIES
COMMISSION DISTRICT #: 5

3. MEETING DATE: 11/19/02

4. AGENDA:

- ___ CONSENT
- ADMINISTRATIVE
- ___ APPEALS
- ___ PUBLIC
- ___ WALK ON
- TIME REQUIRED: ___

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE F.S. Chap. 125.3401
 - ___ ORDINANCE _____
 - ___ ADMIN. CODE _____
 - OTHER I.R.C. Ruling 63-20

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER: _____
- B. DEPARTMENT: Lee County Public Works
- C. DIVISION/SECTION: Utilities Division
- BY: Rick Diaz, Utilities Director

DATE: 10/22/02

7. BACKGROUND:

On March 31, 1998 the BOCC adopted Resolution No. 98-03-249. The Resolution provided preliminary inducement for GES, an IRC 63-20 not-for-profit corporation, to finance and acquire Gulf Utility Company.

On June 9, 1998 the BOCC adopted Resolution No. 98-06-18 granting final approval to a proposed plan of finance for the cost of the acquisition of Gulf Utility Company by the IRC 63-20 corporation, Gulf Environmental Services, Inc. (GES).

(CONT'D)

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

(A) DEPARTMENT DIRECTOR	(B) PURCH. OR CONTRACTS	(C) HUMAN RESOURCES	(D) OTHER	(E) COUNTY ATTORNEY	(F) BUDGET SERVICES				(G) COUNTY MANAGER
					OA	OM	Risk	GC	
<i>[Signature]</i> Lavender Date: 10/22/02	N/A Date:	N/A Date:		<i>[Signature]</i> D. Owen Date: 10/28/02					<i>[Signature]</i> Lavender Date: 10/22/02

10. COMMISSION ACTION:

- APPROVED
- ___ DENIED
- ___ DEFERRED
- ___ OTHER

Rec. by CoAtty

Date: 10/23/02

Time: 3:45 PM

Forwarded To:

Budget

10/23/02 9:25 AM

Resolution No. 98-06-18 provides the BOCC the authority to assume GES' debt and the take-over of its operations. Staff recommends, at this time, that this occur on or about midnight of June 30, 2003. As of that date, the existing contract operator's contract will terminate.

Request BOCC approval for the coordination and transition by LCU for the assumption of GES, and the refinancing of the GES debt with a county bond issue.

LCU has provided in its FY 2002-2003 BOCC approved budget, the necessary funds and staffing requirements to perform the entire operation of GES.

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20030527

REQUESTED MOTION:

ACTION REQUESTED: Authorize the Chairman or Vice Chairman to sign a resolution for the authorization, execution and delivery of a Bond Purchase Agreement that meets certain specific criteria in connection with the Water and Sewer Refunding Revenue Bonds Series 2003A and Water and Sewer Revenue Bonds, Series 2003B. Authorize other approvals as necessary contained in this resolution.

WHY ACTION IS NECESSARY: Allows greater flexibility in marketing the Water and Sewer Refunding Revenue Bonds, Series 2003A and Water and Sewer Revenue Bonds, Series 2003B.

WHAT ACTION ACCOMPLISHES: Allows the Bond Purchase Agreement to be signed (if the bonds are sold) without reconvening the Board of County Commissioners.

2. DEPARTMENTAL CATEGORY: COMMISSION DISTRICT # <u>A1A</u>		3. MEETING DATE: <u>05-27-2003</u>
4. AGENDA:	5. REQUIREMENT/PURPOSE: (Specify)	6. REQUESTOR OF INFORMATION:
<input checked="" type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADMINISTRATIVE <input type="checkbox"/> APPEALS	<input type="checkbox"/> STATUTE <input type="checkbox"/> ORDINANCE <input type="checkbox"/> ADMIN. <input type="checkbox"/> CODE <input type="checkbox"/> OTHER	A. COMMISSIONER B. DEPARTMENT <u>County Administration</u> C. DIVISION: <u>County Manager</u> BY: <u>Antonio Majul, Budget Director</u>
<input type="checkbox"/> PUBLIC <input type="checkbox"/> WALK ON <input type="checkbox"/> TIME REQUIRED:		<i>AM</i>

BACKGROUND: On March 4, 2003, the Board of County Commissioners authorized the County staff to proceed to prepare documents for the Water and Sewer Refunding Revenue Bonds, Series 2003A and Water and Sewer Revenue Bonds, Series 2003B. At that time, the BOCC also approved selection of the Disclosure Counsel, Bond Counsel and Underwriters (Blue Sheet #20030212).

The bond refunding and new money issues are known as the Water and Sewer Refunding Revenue Bonds, Series 2003A and Water and Sewer Revenue Bonds, Series 2003B. Series 2003A provides funds for the acquisition of Gulf Environmental Services, Inc. (GES) by Lee County. Series 2003B provides funds to undertake certain capital improvements to the GES water and wastewater utility system. The Delegating Resolution specifies certain conditions that must be met for the bonds to be sold.

8. MANAGEMENT RECOMMENDATIONS: Approve the Delegating Resolution for the Water and Sewer Refunding Revenue Bonds, Series 2003A and Water and Sewer Revenue Bonds, Series 2003B.

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>[Signature]</i> 5/12/03				<i>[Signature]</i> 5/12/03	OA <i>[Signature]</i> 5/12/03	OM <i>[Signature]</i> 5/12/03	Risk <i>[Signature]</i> 05/12/03	GC <i>[Signature]</i> 5/12/03	<i>[Signature]</i> for DDS 5-14-03

COMMISSION ACTION:

5-0 APPROVED
 DENIED
 DEFERRED
 OTHER

FORWARDED BY
 COUNTY ADMIN. SG
 5-12-03
 COUNTY ADMIN.
 FORWARDED TO: [Signature]

REC'D.
 BY CO. ATTY.
 1140 AM
 5/12/03
 CO. ATTY. [Signature]
 FORWARDED TO:
Budget
[Signature]

Sheet #20030527 Continued

These bonds will be sold when specific criteria can be met in the market place. The governing body within a maximum of 48 hours generally should approve bond sales. This agenda item will allow the implementation of a Delegating Resolution that gives the authorization to the Chairman or Vice Chairman to execute the Bond Purchase Agreement without a meeting of the BOCC. This allows greater flexibility in selecting the most appropriate day of the week depending upon the changes in the market.

The Delegating Resolution specifies certain conditions that must be met. For the Water and Sewer Refunding Revenue Bonds, Series 2003A, the following criteria are included:

- The issue cannot exceed \$70,000,000;
- The Underwriter's Discount cannot exceed .343% of the par amount of the Series 2003A Bonds;
- True Interest Cost (TIC) not to exceed 5.5% per annum;
- The final maturity cannot be later than October 1, 2027;
- The first call date may be no later than 2014;
- No call premium may exceed 1% of the Series 2003A Bonds to be redeemed;
- Receipt by the BOCC Chairman of a disclosure statement and a truth-in-bonding statement of the Underwriter;
- Receipt of a good faith deposit in the amount no less than 1% of the par amount;
- The BOCC Chairman has the authority to determine which maturities will be refunded with the assistance and advice of the Financial Advisor.

For the Water and Sewer Revenue Bonds, Series 2003B, the following criteria are included:

- issue cannot exceed \$15,000,000;
- The Underwriter's Discount cannot exceed .343% of the par amount of the Series 2003B Bonds;
- The final maturity cannot be later than October 1, 2027;
- True Interest Cost (TIC) not to exceed 5.5% per annum;
- The first call date may be no later than 2014;
- No call premium may exceed 1% of the Series 2003B Bonds to be redeemed;
- Receipt by the BOCC Chairman of a disclosure statement and a truth-in-bonding statement of the Underwriter;
- Receipt of a good faith deposit in the amount no less than 1% of the par amount;
- The BOCC Chairman has the authority to determine which maturities will be refunded with the assistance and advice of the Financial Advisor.

This resolution also authorizes the execution and delivery of the Official Statement (OS), appoints the paying agent and registrar for the bonds, authorizes execution and delivery of an escrow deposit agreement and appoints an escrow agent, approves the execution and delivery of a continuing disclosure certificate and authorizes municipal bond insurance as well as an effective date for the bonds.

The underwriters approved for this transaction by the BOCC on March 4, 2003 are as follows:

1. Citigroup Global Markets, Inc. (formerly Salomon Smith Barney)	50%
2. UBS Paine Webber	35%
3. Ramirez & Company	<u>15%</u>
	100%

ors, Giblin & Nickerson, PA is the Bond Counsel and Holland & Knight is the Disclosure Counsel.


Rev. Rul. 63-20, 1963-1 CB 24, IRC Sec(s). 103

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Headnote:

Rev. Rul. 63-20, 1963-1 CB 24 -- IRC Sec. 103 (Also Section  61;  1.61-7.)

Reference(s): Code Sec. 103; Reg § 1.103-1

Obligations issued by a nonprofit corporation formed under the general nonprofit corporation law of a state for the purpose of stimulating industrial development within a political subdivision of the state will be considered issued "on behalf of" the political subdivision, for the purposes of  section 1.103-1 of the Income Tax Regulations, provided each of the following requirements is met: (1) the corporation must engage in activities which are essentially public in nature; (2) the corporation must be one which is not organized for profit (except to the extent of retiring indebtedness); (3) the corporate income must not inure to any private person; (4) the state or a political subdivision thereof must have a beneficial interest in the corporation while the indebtedness remains outstanding and it must obtain full legal title to the property of the corporation with respect to which the indebtedness was incurred upon retirement of such indebtedness; and (5) the corporation must have been approved by the state or a political subdivision thereof, either of which must also have approved the specific obligations issued by the corporation. Interest received from such obligations is excludable from gross income under the provisions of section 103(a)(1) of the Internal Revenue Code of 1954.



Revenue Ruling 54-296, C.B. 1954-2, 59; Revenue Ruling 57-187, C.B. 1957-1, 65; Revenue Ruling 59-41, C.B. 1959-1, 13; and Revenue Ruling 60-248, C.B. 1960-2, 35, distinguished.

Full Text:

Advice has been requested whether interest received on bonds issued by a nonprofit industrial development corporation organized under the general nonprofit corporation law of a state is excludable from gross income under section 103(a)(1) of the Internal Revenue Code of 1954.

The *S* corporation was incorporated as a membership corporation under the general nonprofit corporation law of a state. The corporation was organized for the general purpose of stimulating industrial development within *P* county. The articles of incorporation authorize the *S* corporation to purchase, lease and sell industrial sites and buildings and to build industrial facilities for lease or sale to new or expanding businesses within *P* county. The *S* corporation does not contemplate pecuniary gain to its members, who consist of representatives of the local chambers of commerce and other private business groups in *P* county, the county commissioners and officials of participating municipalities. The *S* corporation will have perpetual existence. The articles of incorporation further provide that upon retirement of any outstanding corporate indebtedness, or upon dissolution of the corporation, the beneficial interest of any property owned by the *S* corporation will be solely in *P* county.

Funds for the operating expenses of the corporation are provided by *P* county, local chambers of commerce and manufacturing associations and the department of commerce of the state involved.

The S corporation purchased land in P county and erected and equipped a factory thereon which it leased to an industrial firm for a period of 2x years under a lease agreement. The S corporation financed this project through the issuance of its interest bearing revenue bonds. The total rental to be paid by the industrial firm under the lease agreement is an amount sufficient to pay the principal of and interest on the bonds.

The indenture of trust, under which the bonds were issued, provides that the S corporation will deliver to the indenture trustee a deed of title to the land and factory, which the trustee will hold until the bonds are fully retired. In the event of a default by the S corporation in the payment of the principal and interest on the bonds, the trustee has the power to sell the property and use the proceeds to pay the bondholders.

The Internal Revenue Service holds that obligations of a nonprofit corporation organized pursuant to the general nonprofit corporation law of a state will be considered issued "on behalf of" the state or a political subdivision thereof for the purposes of section 1.103-1 of the Income Tax Regulations, provided each of the following requirements is met: (1) the corporation must engage in activities which are essentially public in nature; (2) the corporation must be one which is not organized for profit (except to the extent of retiring indebtedness); (3) the corporate income must not inure to any private person; (4) the state or a political subdivision thereof must have a beneficial interest in the corporation while the indebtedness remains outstanding and it must obtain full legal title to the property of the corporation with respect to which the indebtedness was incurred upon the retirement of such indebtedness; and (5) the corporation must have been approved by the state or a political subdivision thereof, either of which must also have approved the specific obligations issued by the corporation. <Page 26>

In the instant case, P county does not have a beneficial interest in the S corporation during the period the revenue bonds will be outstanding; nor will the county necessarily acquire full legal title to the land and factory upon retirement of the bonds. The articles of incorporation provide only that, upon retirement of any corporate indebtedness, or upon dissolution of the corporation, P county will have a beneficial interest in the assets of the S corporation. Therefore, there will not necessarily be a vesting of full legal title to the land and factory in P county.

Furthermore, while the fact that P county and its participating municipalities are represented among the membership of the S corporation and contribute money to its operations indicates governmental authorization of the corporation and approval of its general objectives, such activities alone are not deemed to constitute approval of the specific bonds issued by the S corporation.

Under the circumstances in the instant case, it is held that the revenue bonds issued by the S corporation are not issued "on behalf of" a political subdivision within the meaning of section 1.103-1 of the regulations. Therefore, the interest received on the bonds will be includible in the gross income of the bondholders under the provisions of section 61(a)(4) of the Code.

Revenue Ruling 54-296, C.B. 1954-2, 59, and Revenue Ruling 59-41, C.B. 1959-1, 13, are distinguishable from the instant case. In both of those rulings, the political subdivision involved had a beneficial interest in the nonprofit corporation prior to the retirement of the indebtedness.

In Revenue Ruling 54-296, a municipality leased to a nonprofit corporation a municipally-owned building in exchange for all its stock. The corporation proposed to issue bonds to finance improvements to the building and it was held that interest on the bonds would be excludable from gross income under section 103 of the Code. The beneficial interest of the municipality consisted in its ownership of all the stock of the corporation and its right under the lease at any time to acquire the improvements by discharging the corporation's indebtedness. Moreover, the municipality retained title to the building which it leased to the corporation.

In Revenue Ruling 59-41, it was held that the bonds of a nonprofit corporation organized under general state law at the request of a municipality to operate the local water system would be issued on behalf of the municipality for purposes of section 103. The municipality which had the right pursuant to law to purchase the water system, waived such right and entered into a contract with the corporation ratifying and approving the purchase of the system by the corporation. The beneficial interest of the municipality consisted in its right under the contract at any time to purchase the water system for an amount equal to the indebtedness then outstanding with interest.

Also, in each of those rulings the political subdivision involved was to become absolute owner of the property in question upon retirement of the corporate indebtedness.

Revenue Ruling 57-187, C.B. 1957-1, 65, and Revenue Ruling 60-248, C.B. 1960-2, 35, are also distinguishable from the instant case. They hold that interest on bonds issued by a public corporation or corporate governmental agency organized pursuant to a special state **<Page 27>** statute providing for the creation of such corporations for the particular purpose specified therein and authorizing such corporations to issue bonds to enable them to carry out the specified purpose, is excludable from gross income under section 103 of the Code. In the instant case the corporation in question is not a public corporation or corporate governmental agency organized under such a special state statute; it is a private corporation organized under the general nonprofit law of the state.

The conclusion reached in the instant case is not inconsistent with Revenue Ruling 54-106, C.B. 1954-1, 28, which states that bonds issued by or on behalf of a municipality for the purpose of financing the acquisition or construction of municipally-owned industrial plants for lease to private industry constitute obligations of a political subdivision of a state within the meaning of section 22(b)(4) of the 1939 Code (section 103 of the 1954 Code). That Revenue Ruling did not consider the question what constitutes issuance of bonds "on behalf of" a political subdivision, which is the issue in the instant case.

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¶ Also released as Technical Information Release 442, dated Jan. 11, 1963.

LEE COUNTY RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, RELATING TO THE COUNTY'S DEFEASING OF THE GULF ENVIRONMENTAL SYSTEM'S ("GES") OUTSTANDING BONDS FOR ITS WATER AND WASTEWATER TREATMENT FACILITIES INFRASTRUCTURE, ASSOCIATED REAL PROPERTY AND CUSTOMERS, LYING WITHIN THE GES COUNTY-FRANCHISED SERVICE AREA; PROVIDING FOR CERTAIN FINDINGS BY THE BOARD OF COUNTY COMMISSIONERS CONSISTENT WITH THE REQUIREMENTS OF SECTION 125.3401, FLORIDA STATUTES; PROVIDING FOR ADDING THE GES WATER AND WASTEWATER TREATMENT FACILITIES, ASSOCIATED LANDS AND CUSTOMERS LYING WITHIN THE GES COUNTY-FRANCHISED SERVICE AREA INTO THE LEE COUNTY UTILITIES SYSTEM UPON THE CLOSING OF SUCH SALE; PROVIDING FOR THE APPLICATION OF THE LEE COUNTY UTILITIES RATES, FEES AND CHARGES TO THE CUSTOMERS OF GES UPON THEIR INCORPORATION INTO THE LEE COUNTY UTILITIES SYSTEM, AND THE DATE OF SUCH RATES TO BE BILLED; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners ("Board") is the governing body in and for Lee County, a political subdivision and charter county of the State of Florida; and,

WHEREAS, the Board is authorized by Florida law to acquire or sell utilities pursuant to Section 125.01 and Section 125.3401, Florida Statutes; and,

WHEREAS, the Gulf Environmental Services, Inc.'s ("GES") Water and

Wastewater Treatment infrastructure, associated real property, transmission facilities and customers lying within the County-granted franchise to GES may be considered or interpreted as a "utility" as contemplated by Section 125.01 and Section 125.3401, F.S.; and,

WHEREAS, on March 31, 1998, the Board adopted Lee County Resolution No. 98-03-249 granting preliminary approval to GES for the acquisition of Gulf Utility Company, Inc., preliminary approval for GES' Bonds and for acceptance of GES' assets upon the defeasance of the GES Bonds by the County, among other things; and,

WHEREAS, on June 9, 1998, the Board adopted Lee County Resolution No. 98-06-18 granting final approval to GES to acquire Gulf Utility Company, Inc., approving the GES plan of finance, agreeing to accept title to the GES assets upon retirement of the GES Bonds and making certain public purpose findings pursuant to Section 125.3401, F.S., among other things; and,

WHEREAS, the Board now desires to acquire and accept from GES, GES' water and wastewater treatment infrastructure, associated real property, transmission facilities and customers lying within the GES franchise area in Lee County, Florida ("The Property") by the defeasance of the GES Bonds and pursuant to the applicable terms and conditions of I.R.S. Ruling #63-20, for its subsequent incorporation into the Lee County Utilities System under the County's authority per Sections 125.01 and 125.3401, F.S.; and,

WHEREAS, the Board has now made certain findings at a public hearing as outlined in the requirements of Section 125.3401, F.S., and I.R.S. Ruling #63-20 for the

County's acquisition of The Property by the defeasing of GES' Water and Sewer System Revenue Bonds, Series 1998; and,

WHEREAS, the Board hereby finds that the acquisition of The Property, is: **1.** consistent with the requirements as outlined in Section 125.3401, F.S., **2.** authorized pursuant to Section 125.01, F.S.; **3.** is consistent with the terms and conditions of I.R.S. Ruling #63-20, **4.** serves a public purpose, **5.** is in the public's interest, **6.** and is to the public's benefit, and as the result, authorizes and approves such acquisition.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, that:

1. The above recitals are hereby adopted by the Board of County Commissioners and incorporated herein as if set out at length in this section.
2. The Board hereby finds that, consistent with the requirements as set out in Section 125.3401, F.S. (Exhibit "A", hereto) as presented and represented by the Lee County Public Works Department, Lee County Division of Utilities and its several consultants in a public hearing conducted on this date (filed briefing documents, Composite Exhibit "B" hereto), the County's powers under Chapter 125, F.S., and the terms and conditions for such acquisition under Lee County Resolution No. 98-06-18 and I.R.S. Ruling #63-20, the purchase of The Property by the defeasing of GES' Series 1998 Water and Sewer System Revenue Bonds, serves a public purpose, is in the public's interest, is to the public's benefit, and

accordingly, is hereby approved and authorized.

3. Upon the closing of the sale of The Property, said Property shall be incorporated into the Lee County Utilities (LCU) System, and become subject to the ownership and jurisdiction of the County, including the application of all County rates, rules and regulations and operations from that date forward as they may be structured or implemented, and amended and/or revised by the County from time to time. The LCU rates, fees and charges to GES customers will be applied to the acquired GES System as of October 1, 2003 ("the October, 2003 Lee County Utilities billing").
4. The Chairman or Vice Chairman is hereby authorized to execute any and all documents related to the County's purchase of The Property on behalf of the Board and Lee County staff is hereby directed and authorized to perform any and all other lawful acts necessary and attendant to the closing of such acquisition.
5. This Resolution shall take effect immediately upon its adoption by the Board of County Commissioners.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and, being put to a vote, the vote was as follows:

DOUGLAS ST. CERNY _____
BOB JANES _____
RAY JUDAH _____
ANDREW COY _____
JOHN ALBION _____

DULY PASSED AND ADOPTED THIS ____ day of _____, 2003.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of the County Attorney

EXHIBIT "A"

tions issued by such entity to any public agency as provided in s. 163.01(3)(b) whether or not such agency is a member of the entity. Such entity may have as members, in addition to counties, other public agencies as described in s. 163.01(3)(b) and may lend the proceeds of obligations to such public agencies for purposes of financing or refinancing capital projects or working capital if such agencies are otherwise authorized to incur debt.

History.—s. 3, ch. 96-216.



125.3401 Purchase, sale, or privatization of water, sewer, or wastewater reuse utility by county.—No county may purchase or sell a water, sewer, or wastewater reuse utility that provides service to the public for compensation, or enter into a wastewater facility privatization contract for a wastewater facility, until the governing body of the county has held a public hearing on the purchase, sale, or wastewater facility privatization contract and made a determination that the purchase, sale, or wastewater facility privatization contract is in the public interest. In determining if the purchase, sale, or wastewater facility privatization contract is in the public interest, the county shall consider, at a minimum, the following:

(1) The most recent available income and expense statement for the utility;

(2) The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;

(3) A statement of the existing rate base of the utility for regulatory purposes;

(4) The physical condition of the utility facilities being purchased, sold, or subject to a wastewater facility privatization contract;

(5) The reasonableness of the purchase, sales, or wastewater facility privatization contract price and terms;

(6) The impacts of the purchase, sale, or wastewater facility privatization contract on utility customers, both positive and negative;

(7)(a) Any additional investment required and the ability and willingness of the purchaser, or the private firm under a wastewater facility privatization contract, to make that investment, whether the purchaser is the county or the entity purchasing the utility from the county;

(b) In the case of a wastewater facility privatization contract, the terms and conditions on which the private firm will provide capital investment and financing or a combination thereof for contemplated capital replacements, additions, expansions, and repairs. The county shall give significant weight to this criteria.

(8) The alternatives to the purchase, sale, or wastewater facility privatization contract, and the potential impact on utility customers if the purchase, sale, or wastewater facility privatization contract is not made; and

(9)(a) The ability of the purchaser or the private firm under a wastewater facility privatization contract to provide and maintain high-quality and cost-effective utility service, whether the purchaser is the county or the entity purchasing the utility from the county.

(b) In the case of a wastewater facility privatization contract, the county shall give significant weight to the technical expertise and experience of the private firm in carrying out the obligations specified in the wastewater facility privatization contract.

(10) All moneys paid by a private firm to a county pursuant to a wastewater facility privatization contract shall be used for the purpose of reducing or offsetting property taxes, wastewater service rates, or debt reduction or making infrastructure improvements or capital asset expenditures or other public purpose; provided, however, nothing herein shall preclude the county from using all or part of the moneys for the purpose of the county's qualification for relief from the repayment of federal grant awards associated with the wastewater system as may be required by federal law or regulation.

The county shall prepare a statement showing that the purchase, sale, or wastewater facility privatization contract is in the public interest, including a summary of the purchaser's or private firm's experience in water, sewer, and wastewater reuse utility operation and a showing of financial ability to provide the service, whether the purchaser or private firm is the county or the entity purchasing the utility from the county.

History.—s. 1, ch. 84-84; s. 1, ch. 93-31; s. 6, ch. 96-202.

125.35 County authorized to sell real and personal property and to lease real property.—

(1)(a) The board of county commissioners is expressly authorized to sell and convey any real or personal property, and to lease real property, belonging to the county, whenever the board determines that it is to the best interest of the county to do so, to the highest and best bidder for the particular use the board deems to be the highest and best, for such length of term and such conditions as the governing body may in its discretion determine.

(b) Notwithstanding the provisions of paragraph (a), the board of county commissioners is expressly authorized to:

1. Negotiate the lease of an airport or seaport facility;

2. Modify or extend an existing lease of real property for an additional term not to exceed 25 years, where the improved value of the lease has an appraised value in excess of \$20 million; or

3. Lease a professional sports franchise facility financed by revenues received pursuant to s. 125.0104 or s. 212.20;

under such terms and conditions as negotiated by the board.

(c) No sale of any real property shall be made unless notice thereof is published once a week for at least 2 weeks in some newspaper of general circulation published in the county, calling for bids for the purchase of the real estate so advertised to be sold. In the case of a sale, the bid of the highest bidder complying with the terms and conditions set forth in such notice shall be accepted, unless the board of county commissioners rejects all bids because they are too low. The board of county commissioners may require a deposit to be

COMPOSITE EXHIBIT "B"