

Tab 1	CS/SB 324 by FT, Legg (CO-INTRODUCERS) Simpson; (Similar to CS/H 0347) Utility Projects						
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494824	A	S	RCS	CU, Hutson	Delete L.566 - 693.	02/23	03:14 PM

Tab 2	SB 840 by Simpson; (Similar to CS/H 0579) Municipal Power Regulation						
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325140	D	S	RCS	CU, Garcia	Delete everything after	02/23	03:14 PM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
COMMUNICATIONS, ENERGY, AND PUBLIC UTILITIES
Senator Grimsley, Chair
Senator Hukill, Vice Chair

MEETING DATE: Tuesday, February 23, 2016

TIME: 1:30—3:30 p.m.

PLACE: 301 Senate Office Building

MEMBERS: Senator Grimsley, Chair; Senator Hukill, Vice Chair; Senators Abruzzo, Bradley, Dean, Evers, Garcia, Gibson, Hutson, and Sachs

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 324 Finance and Tax / Legg (Similar CS/H 347)	Utility Projects; Creating the "Utility Cost Containment Bond Act"; authorizing certain local governmental entities to finance the costs of a utility project by issuing utility cost containment bonds upon application by a local agency; authorizing an authority to issue utility cost containment bonds for specified purposes related to utility projects; requiring the local agency or its publicly owned utility to collect the utility project charge, etc. CU 01/12/2016 Favorable FT 02/08/2016 Fav/CS CU 02/23/2016 Fav/CS AP	Fav/CS Yeas 8 Nays 1
2	SB 840 Simpson (Similar CS/H 579)	Municipal Power Regulation; Requiring certain entities created under the Interlocal Cooperation Act of 1969 to submit independently prepared financial statements for certain electric power projects to specified public entities; expanding the duties of the Public Counsel to include proceedings involving the Florida Municipal Power Agency; revising the definition of the term "public utility" to include the Florida Municipal Power Agency; exempting the agency from regulation by the Public Service Commission for purposes of rates and service, etc. CU 02/23/2016 Fav/CS AGG AP	Fav/CS Yeas 7 Nays 1

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: CS/CS/SB 324

INTRODUCER: Communications, Energy, and Public Utilities Committee, Finance and Tax Committee and Senator Legg and others

SUBJECT: Utility Projects

DATE: February 23, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.	Babin	Diez-Arguelles	FT	Fav/CS
3.	Wiehle	Caldwell	CU	Fav/CS
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 324 establishes a new mechanism - utility cost containment bonds - available to a utility authority to finance projects related to water or wastewater service on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity. Utility cost containment bonds are secured by a utility project charge levied on utility customers. The separate charge is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate and more favorable terms for bonds issued to fund eligible projects.

Briefly, the financing mechanism created by the bill operates as follows:

- A local agency applies to the authority to finance the costs of an eligible project using utility cost containment bonds.
- The authority adopts a financing resolution, setting forth certain requirements for issuance of the bonds.
- The bonds are secured by the revenues from a separate utility project charge stated on the bill of each present and future customer of the services specified in the financing resolution.
- The revenues from the charge are transferred to the authority and held in trust for the benefit of the bondholders.

The bill may reduce local government expenditures by reducing financing costs for water and waste water utility projects.

The bill takes effect July 1, 2016.

II. Present Situation:

Financing Authority of Local Government Entities for Public Works Projects

Local governments are authorized under current law to issue bonds, revenue certificates, and other forms of indebtedness related to the provision of public works projects.

County Bonding

A county may issue water revenue bonds, sewer revenue bonds, or general obligation bonds to pay all or part of the cost to purchase, construct, improve, extend, enlarge, or reconstruct water supply systems or sewage disposal systems.¹ Water revenue bonds are payable solely from water service charges.² Sewer revenue bonds are payable solely from sewer service charges.³ Neither type of revenue bond pledges the property, credit, or general tax revenue of the county. General obligation bonds are payable from ad valorem taxes alone or from ad valorem taxes with an additional secured pledge of water service charges, sewer service charges, special assessments, or a combination of these sources.⁴ Issuance of general obligation bonds, as required by the State Constitution,⁵ requires approval by referendum, and a county is required to levy annually a special tax upon all taxable property within the county to pay the principle and interest as it becomes due.⁶ Counties may also create special water and sewer districts to serve unincorporated areas, and the district's board may issue revenue bonds to finance all or part of the cost of a water system, sewer system, or both. Such bonds are payable from the revenues derived from operation of the utility system as provided by law and the authorizing resolution of the district's board.⁷

Municipal Bonding

A municipality may issue revenue bonds, general obligation bonds, ad valorem bonds, or improvement bonds to finance capital expenditures made for a public purpose. Revenue bonds are payable from sources other than ad valorem taxes and are not secured by a pledge of the property, credit, or general tax revenue of the municipality.⁸ General obligation bonds are payable from any special taxes levied for the purpose of repayment and any other sources as

¹ Section 153.03(1) and (2), F.S.

² Section 153.02(9), F.S.

³ Section 153.02(10), F.S.

⁴ Section 153.02(11), F.S.

⁵ Section 12, Article VII, of the State Constitution (providing that counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation only "to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation.")

⁶ Section 153.07, F.S.

⁷ Section 153.63(1), F.S. Such bonds may also be secured by the pledge of special assessments or the full faith and credit of the district.

⁸ Section 166.101(4), F.S.

provided by the authorizing ordinance or resolution.⁹ Such bonds are secured by the full faith and credit and taxing power of the municipality and may require approval by referendum. Ad valorem bonds are payable from the proceeds of ad valorem taxes and require approval by referendum.¹⁰ Improvement bonds are special obligations payable solely from the proceeds of special assessments levied for a project.¹¹

Further, a municipality may issue mortgage revenue certificates or debentures to acquire, construct, or extend public works, including, among other things, water and alternative water supply facilities, sewage collection and disposal facilities, gas plants and distribution systems, and stormwater projects.¹² These instruments constitute a lien only against the property and revenue of the utility. These instruments may not impose any tax liability upon any real or personal property in the municipality and may not constitute a debt against the issuing municipality.¹³

The Division of Bond Finance (DBF) of the State Board of Administration provides information to, and collects information from, units of local government¹⁴ concerning the issuance of bonds by such entities.¹⁵ Each unit of local government must provide the DBF a complete description of its new general obligation bonds and revenue bonds and must provide advance notice of the impending sale of a new issue of bonds.¹⁶ According to the DBF, a public utility generally finances projects with revenue bonds, securing the debt with a pledge of net revenues of the utility system. These net revenues consist of the income of the public utility remaining after paying expenses necessary to operate and maintain the utility. The DBF notes that this current practice requires the efficient operation of the utility system to assure that sufficient net revenues are available to pay debt service.

Creation and Financing Authority of Intergovernmental Utility Authorities

The Florida Interlocal Cooperation Act of 1969 (Act) is intended to allow local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.¹⁷ The Act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.¹⁸ Under such an agreement, the local governmental units may create a separate legal or administrative entity “to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and

⁹ Section 166.101(2), F.S.

¹⁰ FLA. CONST. art. VII, s. 12; s. 166.101(3), F.S.

¹¹ Section 166.101, F.S., et seq.

¹² Sections 180.06 and 180.08, F.S.

¹³ Section 180.08, F.S.

¹⁴ “Unit of local government” is defined in s. 218.369, F.S., as “a county, municipality, special district, district school board, local agency, authority, or consolidated city-county government or any other local governmental body or public body corporate and politic authorized or created by general or special law and granted the power to issue general obligation or revenue bonds.”

¹⁵ Section 218.37, F.S.

¹⁶ *Id.* The DBF is authorized only to collect information concerning these bonds; it does not exercise any substantive authority to review or approve these transactions.

¹⁷ Section 163.01(2), F.S.

¹⁸ Section 163.01(5), F.S.

other factors influencing the needs and development of local communities.”¹⁹ A separate entity created by an interlocal agreement possesses the authority specified in the agreement.²⁰ Among the authority granted such an entity is the power to authorize, issue, and sell bonds.²¹

The Act specifically addresses the establishment of such entities to provide water service or sewer service (hereinafter referred to as “intergovernmental utility authorities” or “IGUAs”). The Act authorizes the creation of IGUAs to acquire, own, construct, improve, operate, and manage public facilities relating to a governmental function or purpose, including water and alternative water supply facilities, wastewater facilities, and water reuse facilities.²² An IGUA created under this provision may also finance such facilities on behalf of any person. The membership of an IGUA created under this provision is limited to two or more special districts, municipalities, or counties of the state. The IGUA’s facilities may serve populations “within or outside of the members of the entity,” but not within the service area of an existing utility system. An IGUA is not subject to regulation by the Public Service Commission.²³

An IGUA created under s. 163.01(7)(g), F.S., may finance or refinance the acquisition, construction, expansion, and improvement of facilities through the issuance of bonds, notes, or other obligations. Except as may be limited by the interlocal agreement under which the entity is created, all of the privileges, benefits, powers, and terms of the statutes relating to counties²⁴ and municipalities²⁵ are fully applicable to the IGUA. Bonds, notes, and other obligations issued by the IGUA are issued on behalf of the public agencies that are members of the IGUA.²⁶

The Florida Governmental Utility Authority (FGUA) was formed in 1999 pursuant to s. 163.01(7)(g), F.S. As noted on its website, the FGUA is a separate legal entity created by interlocal agreement with the limited purpose of owning and operating a public utility system. It provides retail water and wastewater utility services in several portions of the state. The FGUA consists of 14 counties: Alachua, Citrus, Collier, Hardee, Hillsborough, Lake, Lee, Marion, Orange, Pasco, Polk, Putnam, Seminole, and Volusia.²⁷ The FGUA’s governing board is comprised of six members representing Citrus, Hendry, Lee, Marion, Pasco, and Polk counties.²⁸ Each board member is a county employee appointed by their local government.²⁹

Utility Securitization Financing in Florida

Following the severe tropical storm seasons that Florida faced in 2004 and 2005, the Legislature created a new financing mechanism, referred to as securitization, by which investor-owned electric utilities could petition the Public Service Commission for issuance of a financing order

¹⁹ Section 163.01(2), F.S.

²⁰ Section 163.01(7)(b), F.S.

²¹ Section 163.01(7)(d), F.S.

²² Section 163.01(7)(g), F.S.

²³ Section 367.022(2), F.S.

²⁴ Section 125.01, F.S.

²⁵ Section 166.021, F.S.

²⁶ Section 163.01(7)(g)7., F.S.

²⁷ <http://www.fgua.com> (See “History,” last visited Jan. 31, 2016).

²⁸ <http://www.fgua.com> (See “The board,” last visited Jan. 31, 2016).

²⁹ *Id.*

authorizing the utility to issue bonds through a separate legal entity.³⁰ If granted, the financing order was required to establish a nonbypassable charge to the utility's customers in order to provide a secure stream of revenues to the separate legal entity from which the bonds would be paid. The purpose of this mechanism was to allow the utilities access to low-cost financing to cover storm recovery costs and replenishment of depleted storm reserve funds. This mechanism has been implemented in only one instance.³¹

III. Effect of Proposed Changes:

Summary

The bill establishes a new financing mechanism – utility cost containment bonds – available to an authority to finance or refinance projects related to water or wastewater service on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity. Utility cost containment bonds are secured by a utility project charge levied on utility customers. The separate charge is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate and more favorable terms for bonds issued to fund eligible projects.

Briefly, the financing mechanism created by the bill operates as follows:

- A local agency applies to the authority to finance the costs of an eligible project using utility cost containment bonds.
- The authority adopts a financing resolution, setting forth certain requirements for issuance of the bonds.
- The bonds are secured by the revenues from a separate utility project charge stated on the bill of each present and future customer of the services specified in the financing resolution.
- The revenues from the charge are transferred to the authority and held in trust for the benefit of the bondholders.

Definitions

The bill creates a number of new definitions related to the new financing mechanism.

“Authority” means an entity created pursuant to s. 163.01(7)(g), F.S., or a separate legal entity created by one or more local agencies. This allows any local agency or agencies to act as an authority as long as it creates a separate legal entity.

“Cost,” as applied to a utility project or portion of a utility project financed under this section, means any of the following:

- Any part of the expense of constructing, renovating, or acquiring lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a utility project;
- The expense of demolishing or removing any buildings or structures on acquired land, including the expense of acquiring any lands to which the buildings or structures may be moved, and the cost of all machinery and equipment used for the demolition or removal;

³⁰ Section 366.8260, F.S.

³¹ Docket No. 060038-EI, Florida Public Service Commission.

- Finance charges;
- Interest, as determined by the authority;
- Provisions for working capital and debt service reserves;
- Expenses for extensions, enlargements, additions, replacements, renovations, and improvements;
- Expenses for architectural, engineering, financial, accounting, and legal services, and for plans, specifications, estimates, and administration; and
- Any other expenses necessary or incidental to determining the feasibility of constructing a utility project or incidental to the construction, acquisition, or financing of a utility project.

“Customer” means a person receiving water or wastewater service from a publicly owned utility.

“Finance” or “financing” includes refinancing.

“Financing cost” means any of the following:

- Interest and redemption premiums that are payable on utility cost containment bonds;
- The cost of retiring the principal of utility cost containment bonds, whether at maturity, including acceleration of maturity upon an event of default, or upon redemption, including sinking fund redemption;
- The cost related to issuing or servicing utility cost containment bonds, including payment under an interest rate swap agreement, and any types of fee;
- A payment or expense associated with a bond insurance policy; financial guaranty; contract, agreement, or other credit or liquidity enhancement for bonds; or contract, agreement, or other financial agreement entered into in connection with utility cost containment bonds;
- Any coverage charges; and
- The funding of one or more reserve accounts related to utility cost containment bonds.

“Financing resolution” means a resolution adopted by the governing body of an authority that provides for the financing or refinancing of a utility project with utility cost containment bonds and that imposes a utility project charge in connection with the utility cost containment bonds in accordance with subsection (4). A financing resolution may be separate from a resolution authorizing the issuance of the bonds.

“Governing body” means the body that governs a local agency.

“Local agency” means a member of the authority, or an agency or subdivision of that member, that is sponsoring or refinancing a utility project, or any municipality, county, authority, special district, public corporation, regional water authority, or other governmental entity of the state that is sponsoring or refinancing a utility project.³²

“Public utility services” means water or wastewater services provided by a publicly owned utility. The term does not include communications services as defined in s. 202.11, F.S., Internet, or cable services.

³² Because the FGUA provides “public utility services” (water and wastewater services) that may be supported by a financeable “utility project,” it appears to qualify as an authority or other governmental entity of the state and would meet the definition of a “local agency.” Thus, the FGUA could be both an “authority” and a “local agency” under the bill.

“Publicly owned utility” means a utility furnishing retail or wholesale water or wastewater services which is owned and operated by a local agency. The term includes any successor to the powers and functions of such a utility.

“Revenue” means income and receipts of the authority related to the financing of utility projects and issuance of utility cost containment bonds, including any of the following:

- Bond purchase agreements;
- Bonds acquired by the authority;
- Installment sale agreements and other revenue-producing agreements entered into by the authority;
- Utility projects financed or refinanced by the authority;
- Grants and other sources of income;
- Moneys paid by a local agency;
- Interlocal agreements with a local agency, including all service agreements;
- Interest or other income from any investment of money in any fund or account established for the payment of principal, interest, or premiums on utility cost containment bonds, or the deposit of proceeds of utility cost containment bonds.

“Utility cost containment bonds” means bonds, notes, commercial paper, variable rate securities, and any other evidences of indebtedness issued by an authority, the proceeds of which are used directly or indirectly to pay or reimburse a local agency or its publicly owned utility for the costs of a utility project and which are secured by a pledge of, and are payable from, utility project property.

“Utility project” means the acquisition, construction, installation, retrofitting, rebuilding, or other addition to or improvement of any equipment, device, structure, process, facility, technology, rights, or property located in or out of the state that is used in connection with the operations of a publicly owned utility.

“Utility project charge” means a charge levied on customers of a publicly owned utility to pay the financing costs of utility cost containment bonds issued pursuant to the bill. The term includes any authorized adjustment to the utility project charge.

“Utility project property” means the property right created by the bill. The term does not include any interest in a customer’s real or personal property, but does include the right, title, and interest of an authority in any of the following:

- The financing resolution, the utility project charge, and any adjustment to the utility project charge;
- The financing costs of the utility cost containment bonds and all revenues, and all collections, claims, payments, moneys, or proceeds for, or arising from, the utility project charge; and
- All rights to obtain adjustments to the utility project charge pursuant to the bill.

Local Agency Authority

The process to issue utility cost containment bonds is initiated by the governing body of the local agency holding a public meeting and determining:

- The project to be financed is a utility project;³³
- The local agency will finance costs of the utility project and the associated financing costs will be paid from utility project property (i.e., the charge to utility customers);
- Based on the best information available, the rates charged to the local agency's retail customers by the publicly owned utility, including the utility project charge resulting from the financing of the utility project with utility cost containment bonds, are expected to be lower than the rates that would be charged if the project was financed with bonds payable from revenues of the publicly owned utility.

After such meeting and determinations, the local agency may apply to the utility authority to finance the costs of a utility project using the proceeds of utility cost containment bonds. In its application, the local agency must specify the utility project to be financed, the maximum principal amount, the maximum interest rate, and the maximum stated terms of the utility cost containment bonds.

The Utility Authority

The bill authorizes an authority to issue utility cost containment bonds to finance or refinance utility projects; to refinance debt of a local agency previously issued to finance or refinance such projects, if the refinancing results in present value savings; or, upon approval of a local agency, to refinance previously issued utility cost containment bonds.

To finance a utility project, the authority may form a single-purpose limited liability company and authorize the company to adopt the financing resolution. Alternatively, the authority and two or more of its members or other public agencies may create a new single-purpose entity by interlocal agreement. Either type of entity may be created by the authority solely for the purposes of performing the duties and responsibilities of the authority and is treated as an authority for purposes of the bill.

With respect to regional water projects, the authority must work with local agencies that request assistance to determine the most cost-effective manner of financing. If these entities determine that issuance of utility cost containment bonds will result in lower financing costs for a project, the authority must issue the bonds at the request of the local agencies.

The governing body of an authority that is financing the costs of an eligible utility project must adopt a financing resolution and impose a utility project charge. All provisions of the financing resolution are binding on the authority. The financing resolution must include the following:

- A description of the financial calculation method the authority will use to determine the utility project charge. The calculation method must include a periodic adjustment methodology to be applied at least annually to the utility project charge. The adjustment methodology may not be changed. The authority must establish the allocation of the utility

³³ Under the bill, this determination is deemed "final and conclusive."

project charge among classes of customers of the publicly owned utility. The decisions of the authority are final and conclusive.

- A requirement that each customer in the class or classes of customers specified in the financing resolution who receives water or wastewater service through the publicly owned utility must pay the utility project charge, regardless of whether the customer has an agreement to receive water or wastewater service from a person other than the publicly owned utility.
- A requirement that the utility project charge be charged separately from other charges on the bill of each customer of the utility that is in the class or classes of customers specified in the financing resolution.
- A requirement that the authority enter into a servicing agreement with the local agency or its publicly owned utility to collect the utility project charge.

The authority may require in the financing resolution that, in the event of default by the local agency or its publicly owned utility, the authority must order the sequestration and payment to the beneficiaries of the revenues arising from the utility project property (discussed in detail, below) if the beneficiaries apply for payment of the revenues under a lien. This may apply to a successor entity as well. If a local agency that has outstanding utility cost containment bonds ceases to operate a water or wastewater utility, directly or through its publicly owned utility, any successor entity must assume and perform all obligations of the local agency and its publicly owned utility and assume the servicing agreement with the authority while the utility cost containment bonds remain outstanding.

Utility Project Charges

In the financing resolution, the authority must impose a utility project charge sufficient to ensure timely payment of all financing costs with respect to utility cost containment bonds. The charge must be based on estimates of water or wastewater service usage. The authority may require information from the local agency or its publicly owned utility to establish the charge.

The utility project charge is a nonbypassable charge on all present and future customers of the publicly owned utility in the class or classes of customers specified in the financing resolution at the time of its adoption. If a customer who is subject to the charge enters into an agreement to purchase water or wastewater service from a supplier other than the publicly owned utility, the customer remains liable for payment of the charge if the customer continues to receive any service from the publicly owned utility for the transmission, distribution, processing, delivery, or metering of the underlying water or wastewater service (for example, if the customer gets a well or if a competitor were allowed to also serve the area).

At least annually, and at any other interval specified in the financing resolution and related documents, the authority must determine whether adjustments to the utility project charge are required and, if so, make the necessary adjustments to correct for any overcollection or undercollection of financing costs from the charge or to otherwise ensure timely payment of the financing costs of the bonds, including payment of any required debt service coverage. The authority may require information from the local agency or its publicly owned utility to adjust the charge. If an adjustment is deemed necessary, it must be made using the methodology

specified in the financing resolution. An adjustment may not impose the charge upon a class of customers not previously subject to the charge under the financing resolution.

Revenues from a utility project charge are deemed special revenues of the authority and do not constitute revenue of the local agency or its publicly owned utility for any purpose. The local agency or its publicly owned utility must act as a servicing agent for collecting the charge pursuant to a servicing agreement to be required by the financing resolution. The local agency or its publicly owned utility is authorized to use its established collection policies and remedies under law to enforce collection of the charge. The money collected must be held in trust for the exclusive benefit of the persons entitled to have the financing costs paid from the utility project charge.

The timely and complete payment of all utility project charges by the customer is a condition of receiving water or wastewater service from the publicly owned utility. A customer liable for a utility project charge is not permitted to withhold payment of any portion of the charge.

The pledge of a utility project charge to secure payment of utility cost containment bonds is irrevocable, and the state or any other entity is not permitted to reduce, impair, or otherwise adjust the utility project charge, except for the periodic adjustments that the authority is required to make pursuant to the financing resolution.

Utility Project Property

The utility project charge constitutes utility project property when a financing resolution authorizing the charge becomes effective. Utility project property constitutes property, including contracts that secure utility cost containment bonds, whether or not the revenues and proceeds arising with respect to the utility project property have accrued. The utility project property continuously exists as property for all purposes for the period provided in the financing resolution or until all financing costs with respect to the related utility cost containment bonds are paid in full, whichever occurs first.

Upon the effective date of the financing resolution, the utility project property is subject to a first priority statutory lien to secure the payment of the utility cost containment bonds. The lien secures the payment of all financing costs that exist at that time or that subsequently arise to the holders of the bonds, the trustee or representative for the holders of the bonds, and any other entity specified in the financing resolution or the documents relating to the bonds. The lien attaches to the utility project property regardless of the current ownership of the utility project property, including any local agency or its publicly owned utility, the authority, or other person.

Upon the effective date of the financing resolution, the lien is valid and enforceable against the owner of the utility project property and all third parties, and additional public notice is not required. The lien is a continuously perfected lien on all revenues and proceeds generated from the utility project property, regardless of whether the revenues or proceeds have accrued.

All revenues with respect to utility project property related to utility cost containment bonds, including payments of the utility project charge, must first be applied to the payment of the financing costs of the bonds then due, including the funding of reserves for the bonds. Any

excess revenues will be applied as determined by the authority for the benefit of the utility for which the bonds were issued.

Utility Cost Containment Bonds

The proceeds of utility cost containment bonds made available to the local agency or its publicly owned utility must be used for the utility project identified in the application for financing of the project or used to refinance indebtedness of the local agency that financed or refinanced the project. The bonds must be issued pursuant to the provisions of the bill and the procedures specified for intergovernmental utility authorities under s. 163.01(7)(g)8., F.S., and may be validated pursuant to existing procedures for such entities under s. 163.01(7)(g)9., F.S.

The authority must pledge all utility project property as security for payment of the bonds. All rights of the authority with respect to the pledged property are for the benefit of and enforceable by the beneficiaries of the pledge as provided in the related financing documents.

If utility project property is pledged as security for the payment of utility cost containment bonds, the local agency or its publicly owned utility must enter into a contract with the authority which requires that the local agency or its utility:

- Continue to operate the utility, including the utility project that is being financed or refinanced;
- Collect the utility project charge from customers for the benefit and account of the authority and the beneficiaries of the pledge of the charge, and
- Separately account for and remit revenue from the utility project charge to, or for the account of, the authority.

The utility cost containment bonds are nonrecourse to the credit or any assets of the local agency or the publicly owned utility but are payable from, and secured by a pledge of, the utility project property relating to the bonds and any additional security or credit enhancement specified in the documents relating to the bonds. If the authority is financing the project through a single-purpose limited liability company, the bonds are payable from, and secured by, a pledge of amounts paid by the company to the authority from the applicable utility project property. This represents the exclusive method of perfecting a pledge of utility project property by the company.

The issuance of utility cost containment bonds does not obligate the state or any political subdivision of the state to levy or to pledge any form of taxation to pay the bonds or to make any appropriation for their payment. Each bond must contain on its face the following statement or a similar statement: “Neither the full faith and credit nor the taxing power of the State of Florida or any political subdivision thereof is pledged to the payment of the principal of, or interest on, this bond.”

The authority may not rescind, alter, or amend any resolution or document that pledges utility cost charges for payment of utility cost containment bonds.

Subject to the terms of the pledge document, the validity and relative priority of a pledge is not defeated or adversely affected by the commingling of revenues generated by the utility project

property with other funds of the local agency or the publicly owned utility collecting a utility project charge on behalf of an authority.

Financing costs in connection with utility cost containment bonds are a special obligation of the authority and do not constitute a liability of the state or any political subdivision of the state. Financing costs are not a pledge of the full faith and credit of the state or any political subdivision, including the authority, but are payable solely from the funds identified in the documents relating to the bonds. This does not preclude guarantees or credit enhancements in connection with the bonds.

Except as provided in the bill with respect to adjustments to a utility project charge, recovery of the financing costs for utility cost containment bonds from the utility project charge is irrevocable. Further, the authority is prohibited from: rescinding, altering, or amending the applicable financing resolution to revalue or revise the financing costs of the bonds for ratemaking purposes; determining that the financing costs for the related bonds or the utility project charge is unjust or unreasonable; or in any way reducing or impairing the value of utility project property that includes the charge. The amount of revenues arising with respect to the financing costs for the related bonds or the charge are not subject to reduction, impairment, postponement, or termination for any reason until all financing costs to be paid from the charge are fully met and discharged.

Further, except as provided in the bill with respect to adjustments to a utility project charge, the bill establishes a pledge that the state may not limit or alter the financing costs or the utility project property, including the utility project charge associated with the bonds, or any rights related to the utility project property until all financing costs with respect to the bonds are fully discharged. This provision does not preclude limitation or alteration if adequate provision is made by law to protect the owners of the bonds. The state's pledge may be included by the authority in the governing documents for the bonds.

Bankruptcy Prohibition

Notwithstanding any other law, an authority that has issued utility cost containment bonds may not become a debtor under the United States Bankruptcy Code or become the subject of any similar case or proceeding under any other state or federal law if any payment obligation from utility project property remains with respect to the bonds. Further, a governmental officer or organization may not authorize the authority to become such a debtor or become subject to such a case or proceeding in this circumstance.

Construction

The bill provides for liberal construction of the bond provisions to effectively carry out its intent and purposes. Further, the bill expressly grants and confers upon public entities all incidental powers necessary to carry the bill into effect.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Customers may benefit from lower financing costs for local agency utility projects, if the resulting savings are passed through to customers. The bill does not require that savings be passed through to customers.

Once utility cost containment bonds are issued, a customer will be obligated to pay the charge for as long as he or she resides on property within the service territory.

C. Government Sector Impact:

The bill may reduce local government expenditures by reducing financing costs for water or wastewater utility projects for utilities owned and operated by a local agency, including any municipality, county, special district, public corporation, regional water authority, or other governmental entity sponsoring or refinancing a utility project.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates an as-yet unnumbered section of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Communications, Energy, and Public Utilities on February 23, 2016:
The CS deletes the eminent domain provisions added in Finance and Tax.

It also grants discretionary authority, not establishes a requirement, for each authority to work with local agencies that request assistance in determining the most cost-effective manner of financing regional water projects, and, if bonds are to be issued, to cooperate with the local agencies and, if requested by the local agencies, issue utility cost containment bonds.

CS by Finance and Tax on February 8, 2016:

The CS amends the definition of “authority” to mean an entity created under s. 163.01(7)(g), F.S., or a separate legal entity created by one or more local agencies. The CS requires the PSC to notify a county when a petition for revocation is filed and clarifies that counties can condemn a utility through eminent domain proceedings after a petition for revocation is filed with the PSC. The CS makes findings that water service should be priced at a rate commensurate with the market and quality of the service provided and that customers have a right to participate in the selection of their water service provider. The CS removes the option of the PSC to require a utility to take necessary steps to correct quality of water service after finding that the utility is not providing quality of water service.

- B. **Amendments:**

None.



365134

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2016	.	
	.	
	.	
	.	

The Committee on Communications, Energy, and Public Utilities (Hutson) recommended the following:

Senate Amendment

Delete lines 309 - 313
and insert:

(d) Each authority may work with local agencies that request assistance to determine the most cost-effective manner of financing regional water projects. If these entities determine that the issuance of utility cost containment bonds will result in lower financing costs for a project, the authority may



494824

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2016	.	
	.	
	.	
	.	

The Committee on Communications, Energy, and Public Utilities
(Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 566 - 693.

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

And the title is amended as follows:

Delete lines 63 - 73

and insert:

endowing public entities with certain powers;

By the Committee on Finance and Tax; and Senators Legg and Simpson

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1 A bill to be entitled
2 An act relating to utility projects; providing a short
3 title; defining terms; authorizing certain local
4 governmental entities to finance the costs of a
5 utility project by issuing utility cost containment
6 bonds upon application by a local agency; specifying
7 application requirements; requiring a successor entity
8 of a local agency to assume and perform the
9 obligations of the local agency with respect to the
10 financing of a utility project; providing procedures
11 for local agencies to use when applying to finance a
12 utility project using utility cost containment bonds;
13 authorizing an authority to issue utility cost
14 containment bonds for specified purposes related to
15 utility projects; authorizing an authority to form
16 alternate entities to finance utility projects;
17 requiring the governing body of the authority to adopt
18 a financing resolution and impose a utility project
19 charge on customers of a publicly owned utility as a
20 condition of utility project financing; specifying
21 required and optional provisions of the financing
22 resolution; specifying powers of the authority;
23 requiring the local agency or its publicly owned
24 utility to assist the authority in the establishment
25 or adjustment of the utility project charge; requiring
26 that customers of the public utility specified in the
27 financing resolution pay the utility project charge;
28 providing for adjustment of the utility project
29 charge; establishing ownership of the revenues of the
30 utility project charge; requiring the local agency or
31 its publicly owned utility to collect the utility

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32 project charge; conditioning a customer's receipt of
33 public utility services on payment of the utility
34 project charge; authorizing a local agency or its
35 publicly owned utility to use available remedies to
36 enforce collection of the utility project charge;
37 providing that the pledge of the utility project
38 charge to secure payment of bonds issued to finance
39 the utility project is irrevocable and cannot be
40 reduced or impaired except under certain conditions;
41 providing that a utility project charge constitutes
42 utility project property; providing that utility
43 project property is subject to a lien to secure
44 payment of costs relating to utility cost containment
45 bonds; establishing payment priorities for the use of
46 revenues of the utility project property; providing
47 for the issuance and validation of utility cost
48 containment bonds; securing the payment of utility
49 cost containment bonds and related costs; providing
50 that utility cost containment bonds do not obligate
51 the state or any political subdivision and are not
52 backed by their full faith and credit and taxing
53 power; requiring that certain disclosures be printed
54 on utility cost containment bonds; providing that
55 financing costs related to utility cost containment
56 bonds are an obligation of the authority only;
57 providing limitations on the state's ability to alter
58 financing costs or utility project property under
59 certain circumstances; prohibiting an authority with
60 outstanding payment obligations on utility cost

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61 containment bonds from becoming a debtor under certain
62 federal or state laws; providing for construction;
63 endowing public entities with certain powers; amending
64 s. 153.03, F.S.; clarifying that counties may initiate
65 eminent domain over water utilities under certain
66 circumstances; amending s. 367.072, F.S.; revising
67 legislative findings; authorizing counties to initiate
68 condemnation proceedings under certain circumstances;
69 requiring the Florida Public Service Commission to
70 notify counties of petitions to revoke a certificate
71 of authorization; revising how the commission must
72 respond to such petitions; requiring dismissal of
73 condemnation proceedings under certain circumstances;
74 providing an effective date.

75
76 Be It Enacted by the Legislature of the State of Florida:

77
78 Section 1. Utility Cost Containment Bond Act.—

79 (1) SHORT TITLE.—This section may be cited as the "Utility
80 Cost Containment Bond Act."

81 (2) DEFINITIONS.—As used in this section, the term:

82 (a) "Authority" means an entity created under s.
83 163.01(7)(g), Florida Statutes, or a separate legal entity
84 created by one or more local agencies. The term includes any
85 successor to the powers and functions of such an entity.

86 (b) "Cost," as applied to a utility project or a portion of
87 a utility project financed under this section, means:

88 1. Any part of the expense of constructing, renovating, or
89 acquiring lands, structures, real or personal property, rights,

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90 rights-of-way, franchises, easements, and interests acquired or
91 used for a utility project;

92 2. The expense of demolishing or removing any buildings or
93 structures on acquired land, including the expense of acquiring
94 any lands to which the buildings or structures may be moved, and
95 the cost of all machinery and equipment used for the demolition
96 or removal;

97 3. Finance charges;

98 4. Interest, as determined by the authority;

99 5. Provisions for working capital and debt service
100 reserves;

101 6. Expenses for extensions, enlargements, additions,
102 replacements, renovations, and improvements;

103 7. Expenses for architectural, engineering, financial,
104 accounting, and legal services, plans, specifications,
105 estimates, and administration; or

106 8. Any other expenses necessary or incidental to
107 determining the feasibility of constructing a utility project or
108 incidental to the construction, acquisition, or financing of a
109 utility project.

110 (c) "Customer" means a person receiving water or wastewater
111 service from a publicly owned utility.

112 (d) "Finance" or "financing" includes refinancing.

113 (e) "Financing cost" means:

114 1. Interest and redemption premiums that are payable on
115 utility cost containment bonds;

116 2. The cost of retiring the principal of utility cost
117 containment bonds, whether at maturity, including acceleration
118 of maturity upon an event of default, or upon redemption,

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119 including sinking fund redemption;

120 3. The cost related to issuing or servicing utility cost
121 containment bonds, including any payment under an interest rate
122 swap agreement and any type of fee;

123 4. A payment or expense associated with a bond insurance
124 policy; financial guaranty; contract, agreement, or other credit
125 or liquidity enhancement for bonds; or contract, agreement, or
126 other financial agreement entered into in connection with
127 utility cost containment bonds;

128 5. Any coverage charges; or

129 6. The funding of one or more reserve accounts relating to
130 utility cost containment bonds.

131 (f) "Financing resolution" means a resolution adopted by
132 the governing body of an authority that provides for the
133 financing or refinancing of a utility project with utility cost
134 containment bonds and that imposes a utility project charge in
135 connection with the utility cost containment bonds in accordance
136 with subsection (4). A financing resolution may be separate from
137 a resolution authorizing the issuance of the bonds.

138 (g) "Governing body" means the body that governs a local
139 agency.

140 (h) "Local agency" means a member of the authority, or an
141 agency or subdivision of that member, which is sponsoring or
142 refinancing a utility project, or any municipality, county,
143 authority, special district, public corporation, regional water
144 authority, or other governmental entity of the state that is
145 sponsoring or refinancing a utility project.

146 (i) "Public utility services" means water or wastewater
147 services provided by a publicly owned utility. The term does not

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148 include communications services, as defined in s. 202.11,
149 Florida Statutes, Internet access services, or information
150 services.

151 (j) "Publicly owned utility" means a utility providing
152 retail or wholesale water or wastewater services which is owned
153 and operated by a local agency. The term includes any successor
154 to the powers and functions of such a utility.

155 (k) "Revenue" means income and receipts of the authority
156 related to the financing of utility projects and issuance of
157 utility cost containment bonds, including any of the following:

158 1. Bond purchase agreements;

159 2. Bonds acquired by the authority;

160 3. Installment sales agreements and other revenue-producing
161 agreements entered into by the authority;

162 4. Utility projects financed or refinanced by the
163 authority;

164 5. Grants and other sources of income;

165 6. Moneys paid by a local agency;

166 7. Interlocal agreements with a local agency, including all
167 service agreements; or

168 8. Interest or other income from any investment of money in
169 any fund or account established for the payment of principal,
170 interest, or premiums on utility cost containment bonds, or the
171 deposit of proceeds of utility cost containment bonds.

172 (l) "Utility cost containment bonds" means bonds, notes,
173 commercial paper, variable rate securities, and any other
174 evidence of indebtedness issued by an authority the proceeds of
175 which are used directly or indirectly to pay or reimburse a
176 local agency or its publicly owned utility for the costs of a

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177 utility project and which are secured by a pledge of, and are
178 payable from, utility project property.

179 (m) "Utility project" means the acquisition, construction,
180 installation, retrofitting, rebuilding, or other addition to or
181 improvement of any equipment, device, structure, process,
182 facility, technology, rights, or property located within or
183 outside this state which is used in connection with the
184 operations of a publicly owned utility.

185 (n) "Utility project charge" means a charge levied on
186 customers of a publicly owned utility to pay the financing costs
187 of utility cost containment bonds issued under subsection (4).
188 The term includes any adjustments to the utility project charge
189 made under subsection (5).

190 (o) "Utility project property" means the property right
191 created pursuant to subsection (6). The term does not include
192 any interest in a customer's real or personal property but
193 includes the right, title, and interest of an authority in any
194 of the following:

195 1. The financing resolution, the utility project charge,
196 and any adjustment to the utility project charge established in
197 accordance with subsection (5);

198 2. The financing costs of the utility cost containment
199 bonds and all revenues, and all collections, claims, payments,
200 moneys, or proceeds for, or arising from, the utility project
201 charge; or

202 3. All rights to obtain adjustments to the utility project
203 charge pursuant to subsection (5).

204 (3) UTILITY PROJECTS.—

205 (a) A local agency that owns and operates a publicly owned

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206 utility may apply to an authority to finance the costs of a
207 utility project using the proceeds of utility cost containment
208 bonds. In its application to the authority, the local agency
209 shall specify the utility project to be financed by the utility
210 cost containment bonds and the maximum principal amount, the
211 maximum interest rate, and the maximum stated terms of the
212 utility cost containment bonds.

213 (b) A local agency may not apply to an authority for the
214 financing of a utility project under this section unless the
215 governing body has determined, in a duly noticed public meeting,
216 all of the following:

217 1. The project to be financed is a utility project.

218 2. The local agency will finance costs of the utility
219 project, and the costs associated with the financing will be
220 paid from utility project property, including the utility
221 project charge for the utility cost containment bonds.

222 3. Based on the best information available to the governing
223 body, the rates charged to the local agency's retail customers
224 by the publicly owned utility, including the utility project
225 charge resulting from the financing of the utility project with
226 utility cost containment bonds, are expected to be lower than
227 the rates that would be charged if the project were financed
228 with bonds payable from revenues of the publicly owned utility.

229 (c) A determination by the governing body that a project to
230 be financed with utility cost containment bonds is a utility
231 project is final and conclusive, and the utility cost
232 containment bonds issued to finance the utility project and the
233 utility project charge are valid and enforceable as set forth in
234 the financing resolution and the documents relating to the

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235 utility cost containment bonds.

236 (d) If a local agency that has outstanding utility cost
237 containment bonds ceases to operate a water or wastewater
238 utility, directly or through its publicly owned utility,
239 references in this section to the local agency or to its
240 publicly owned utility must be to the successor entity. The
241 successor entity shall assume and perform all obligations of the
242 local agency and its publicly owned utility required by this
243 section and shall assume the servicing agreement required under
244 subsection (4) while the utility cost containment bonds remain
245 outstanding.

246 (4) FINANCING UTILITY PROJECTS.—

247 (a) An authority may issue utility cost containment bonds
248 to finance or refinance utility projects; refinance debt of a
249 local agency incurred in financing or refinancing utility
250 projects, provided such refinancing results in present value
251 savings to the local agency; or, with the approval of the local
252 agency, refinance previously issued utility cost containment
253 bonds.

254 1. To finance a utility project, the authority may:

255 a. Form a single-purpose limited liability company and
256 authorize the company to adopt the financing resolution of such
257 utility project; or

258 b. Create a new single-purpose entity by interlocal
259 agreement under s. 163.01, Florida Statutes, the membership of
260 which shall consist of the authority and two or more of its
261 members or other public agencies.

262 2. A single-purpose limited liability company or a single-
263 purpose entity may be created by the authority solely for the

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264 purpose of performing the duties and responsibilities of the
265 authority specified in this section and constitutes an authority
266 for all purposes of this section. Reference to the authority
267 includes a company or entity created under this paragraph.

268 (b) The governing body of an authority that is financing
269 the costs of a utility project shall adopt a financing
270 resolution and shall impose a utility project charge as
271 described in subsection (5). All provisions of a financing
272 resolution adopted pursuant to this section are binding on the
273 authority.

274 1. The financing resolution must:

275 a. Provide a brief description of the financial calculation
276 method the authority will use in determining the utility project
277 charge. The calculation method must include a periodic
278 adjustment methodology to be applied at least annually to the
279 utility project charge. The authority shall establish the
280 allocation of the utility project charge among classes of
281 customers of the publicly owned utility. The decision of the
282 authority is final and conclusive, and the method of calculating
283 the utility project charge and the periodic adjustment may not
284 be changed;

285 b. Require each customer in the class or classes of
286 customers specified in the financing resolution who receives
287 water or wastewater service through the publicly owned utility
288 to pay the utility project charge regardless of whether the
289 customer has an agreement to receive water or wastewater service
290 from a person other than the publicly owned utility;

291 c. Require that the utility project charge be charged
292 separately from other charges on the bill of customers of the

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293 publicly owned utility in the class or classes of customers
294 specified in the financing resolution; and

295 d. Require that the authority enter into a servicing
296 agreement with the local agency or its publicly owned utility to
297 collect the utility project charge.

298 2. The authority may require in the financing resolution
299 that, in the event of a default by the local agency or its
300 publicly owned utility with respect to revenues from the utility
301 project property, the authority, upon application by the
302 beneficiaries of the statutory lien as set forth in subsection
303 (6), shall order the sequestration and payment to the
304 beneficiaries of revenues arising from utility project property.
305 This subparagraph does not limit any other remedies available to
306 the beneficiaries by reason of default.

307 (c) An authority has all the powers provided in this
308 section and s. 163.01(7)(g), Florida Statutes.

309 (d) Each authority shall work with local agencies that
310 request assistance to determine the most cost-effective manner
311 of financing regional water projects. If the entities determine
312 that the issuance of utility cost containment bonds will result
313 in lower financing costs for a project, the authority shall
314 cooperate with such local agencies and, if requested by the
315 local agencies, issue utility cost containment bonds as provided
316 in this section.

317 (5) UTILITY PROJECT CHARGE.-

318 (a) The authority shall impose a sufficient utility project
319 charge, based on estimates of water or wastewater service usage,
320 to ensure timely payment of all financing costs with respect to
321 utility cost containment bonds. The local agency or its publicly

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322 owned utility shall provide the authority with information
323 concerning the publicly owned utility which may be required by
324 the authority in establishing the utility project charge.

325 (b) The utility project charge is a nonbypassable charge to
326 all present and future customers of the publicly owned utility
327 in the class or classes of customers specified in the financing
328 resolution upon its adoption. If the regulatory structure for
329 the water or wastewater industry changes in a manner that
330 authorizes a customer to choose to take service from an
331 alternative supplier and the customer chooses an alternative
332 supplier, the customer remains liable for paying the utility
333 project charge if the customer continues to receive any service
334 from the publicly owned utility for the transmission,
335 distribution, processing, delivery, or metering of the
336 underlying water or wastewater service.

337 (c) The authority shall determine at least annually and at
338 such additional intervals as provided in the financing
339 resolution and documents related to the applicable utility cost
340 containment bonds whether adjustments to the utility project
341 charge are required. The authority shall use the adjustment to
342 correct for any overcollection or undercollection of financing
343 costs from the utility project charge or to make any other
344 adjustment necessary to ensure the timely payment of the
345 financing costs of the utility cost containment bonds, including
346 adjustment of the utility project charge to pay any debt service
347 coverage requirement for the utility cost containment bonds. The
348 local agency or its publicly owned utility shall provide the
349 authority with information concerning the publicly owned utility
350 which may be required by the authority in adjusting the utility

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351 project charge.

352 1. If the authority determines that an adjustment to the
353 utility project charge is required, the adjustment must be made
354 using the methodology specified in the financing resolution.

355 2. The adjustment may not impose the utility project charge
356 on a class of customers which was not subject to the utility
357 project charge pursuant to the financing resolution imposing the
358 utility project charge.

359 (d) Revenues from a utility project charge are special
360 revenues of the authority and do not constitute revenue of the
361 local agency or its publicly owned utility for any purpose,
362 including any dedication, commitment, or pledge of revenue,
363 receipts, or other income that the local agency or its publicly
364 owned utility has made or will make for the security of any of
365 its obligations.

366 (e) The local agency or its publicly owned utility shall
367 act as a servicing agent for collecting the utility project
368 charge throughout the duration of the servicing agreement
369 required by the financing resolution. The local agency or its
370 publicly owned utility shall hold the money collected in trust
371 for the exclusive benefit of the persons entitled to have the
372 financing costs paid from the utility project charge, and the
373 money does not lose its designation as revenues of the authority
374 by virtue of possession by the local agency or its publicly
375 owned utility.

376 (f) The customer must make timely and complete payment of
377 all utility project charges as a condition of receiving water or
378 wastewater service from the publicly owned utility. The local
379 agency or its publicly owned utility may use its established

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380 collection policies and remedies provided under law to enforce
381 collection of the utility project charge. A customer liable for
382 a utility project charge may not withhold payment, in whole or
383 in part, thereof.

384 (g) The pledge of a utility project charge to secure
385 payment of utility cost containment bonds is irrevocable, and
386 the state, or any other entity, may not reduce, impair, or
387 otherwise adjust the utility project charge, except that the
388 authority shall implement the periodic adjustments to the
389 utility project charge as provided under this subsection.

390 (6) UTILITY PROJECT PROPERTY.—

391 (a) A utility project charge constitutes utility project
392 property on the effective date of the financing resolution
393 authorizing such utility project charge. Utility project
394 property constitutes property, including contracts for securing
395 utility cost containment bonds, regardless of whether the
396 revenues and proceeds arising with respect to the utility
397 project property have accrued. Utility project property shall
398 continuously exist as property for all purposes with all of the
399 rights and privileges of this section through the end of the
400 period provided in the financing resolution or until all
401 financing costs with respect to the related utility cost
402 containment bonds are paid in full, whichever occurs first.

403 (b) Upon the effective date of the financing resolution,
404 the utility project property is subject to a first-priority
405 statutory lien to secure the payment of the utility cost
406 containment bonds.

407 1. The lien secures the payment of all financing costs then
408 existing or subsequently arising to the holders of the utility

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409 cost containment bonds, the trustees or representatives of the
410 holders of the utility cost containment bonds, and any other
411 entity specified in the financing resolution or the documents
412 relating to the utility cost containment bonds.

413 2. The lien attaches to the utility project property
414 regardless of the current ownership of the utility project
415 property, including any local agency or its publicly owned
416 utility, the authority, or any other person.

417 3. Upon the effective date of the financing resolution, the
418 lien is valid and enforceable against the owner of the utility
419 project property and all third parties, and additional public
420 notice is not required.

421 4. The lien is a continuously perfected lien on all
422 revenues and proceeds generated from the utility project
423 property regardless of whether the revenues or proceeds have
424 accrued.

425 (c) All revenues with respect to utility project property
426 related to utility cost containment bonds, including payments of
427 the utility project charge, shall be applied first to the
428 payment of the financing costs of the utility cost containment
429 bonds then due, including the funding of reserves for the
430 utility cost containment bonds. Any excess revenues shall be
431 applied as determined by the authority for the benefit of the
432 utility for which the utility cost containment bonds were
433 issued.

434 (7) UTILITY COST CONTAINMENT BONDS.—

435 (a) Utility cost containment bonds shall be issued within
436 the parameters of the financing provided by the authority
437 pursuant to this section. The proceeds of the utility cost

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438 containment bonds made available to the local agency or its
439 publicly owned utility shall be used for the utility project
440 identified in the application for financing of the utility
441 project or used to refinance indebtedness of the local agency
442 which financed or refinanced utility projects.

443 (b) Utility cost containment bonds shall be issued as set
444 forth in this section and s. 163.01(7)(g)8., Florida Statutes,
445 and may be validated pursuant to s. 163.01(7)(g)9., Florida
446 Statutes.

447 (c) The authority shall pledge the utility project property
448 as security for the payment of the utility cost containment
449 bonds. All rights of an authority with respect to utility
450 project property pledged as security for the payment of utility
451 cost containment bonds shall be for the benefit of, and
452 enforceable by, the beneficiaries of the pledge to the extent
453 provided in the financing documents relating to the utility cost
454 containment bonds.

455 1. If utility project property is pledged as security for
456 the payment of utility cost containment bonds, the local agency
457 or its publicly owned utility shall enter into a contract with
458 the authority which requires, at a minimum, that the publicly
459 owned utility:

460 a. Continue to operate its publicly owned utility,
461 including the utility project that is being financed or
462 refinanced;

463 b. Collect the utility project charge from customers for
464 the benefit and account of the authority and the beneficiaries
465 of the pledge of the utility project charge; and

466 c. Separately account for and remit revenue from the

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467 utility project charge to, or for the account of, the authority.

468 2. The pledge of a utility project charge to secure payment
469 of utility cost containment bonds is irrevocable, and the state
470 or any other entity may not reduce, impair, or otherwise adjust
471 the utility project charge, except that the authority shall
472 implement periodic adjustments to the utility project charge as
473 provided under subsection (5).

474 (d) Utility cost containment bonds shall be nonrecourse to
475 the credit or any assets of the local agency or the publicly
476 owned utility but are payable from, and secured by a pledge of
477 the utility project property relating to the utility cost
478 containment bonds and any additional security or credit
479 enhancement specified in the documents relating to the utility
480 cost containment bonds. If, pursuant to subsection (4), the
481 authority is financing the project through a single-purpose
482 limited liability company, the utility cost containment bonds
483 shall be payable from, and secured by, a pledge of amounts paid
484 by the company to the authority from the applicable utility
485 project property. This paragraph is the exclusive method of
486 perfecting a pledge of utility project property by the company
487 securing the payment of financing costs under any agreement of
488 the company in connection with the issuance of utility cost
489 containment bonds.

490 (e) The issuance of utility cost containment bonds does not
491 obligate the state or any political subdivision thereof to levy
492 or to pledge any form of taxation to pay the utility cost
493 containment bonds or to make any appropriation for their
494 payment. Each utility cost containment bond must contain on its
495 face a statement in substantially the following form:

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496
497 “Neither the full faith and credit nor the taxing power of the
498 State of Florida or any political subdivision thereof is pledged
499 to the payment of the principal of, or interest on, this bond.”
500

501 (f) Notwithstanding any other law or this section, a
502 financing resolution or other resolution of the authority, or
503 documents relating to utility cost containment bonds, the
504 authority may not rescind, alter, or amend any resolution or
505 document that pledges utility cost charges for payment of
506 utility cost containment bonds.

507 (g) Subject to the terms of any pledge document created
508 under this section, the validity and relative priority of a
509 pledge is not defeated or adversely affected by the commingling
510 of revenues generated by the utility project property with other
511 funds of the local agency or the publicly owned utility
512 collecting a utility project charge on behalf of an authority.

513 (h) Financing costs in connection with utility cost
514 containment bonds are a special obligation of the authority and
515 do not constitute a liability of the state or any political
516 subdivision thereof. Financing costs are not a pledge of the
517 full faith and credit of the state or any political subdivision
518 thereof, including the authority, but are payable solely from
519 the funds identified in the documents relating to the utility
520 cost containment bonds. This paragraph does not preclude
521 guarantees or credit enhancements in connection with utility
522 cost containment bonds.

523 (i) Except as otherwise provided in this section with
524 respect to adjustments to a utility project charge, the recovery

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525 of the financing costs for the utility cost containment bonds
526 from the utility project charge is irrevocable, and the
527 authority does not have the power, by rescinding, altering, or
528 amending the applicable financing resolution, to revalue or
529 revise for ratemaking purposes the financing costs of utility
530 cost containment bonds; to determine that the financing costs
531 for the related utility cost containment bonds or the utility
532 project charge is unjust or unreasonable; or to in any way,
533 either directly or indirectly, reduce or impair the value of
534 utility project property that includes the utility project
535 charge. The amount of revenues arising with respect to the
536 financing costs for the related utility cost containment bonds
537 or the utility project charge is not subject to reduction,
538 impairment, postponement, or termination for any reason until
539 all financing costs to be paid from the utility project charge
540 are fully met and discharged.

541 (j) Except as provided in subsection (5) with respect to
542 adjustments to a utility project charge, the state pledges and
543 agrees with the owners of utility cost containment bonds that
544 the state may not limit or alter the financing costs or the
545 utility project property, including the utility project charge,
546 relating to the utility cost containment bonds, or any rights
547 related to the utility project property, until all financing
548 costs with respect to the utility cost containment bonds are
549 fully met and discharged. This paragraph does not preclude
550 limitation or alteration if adequate provision is made by law to
551 protect the owners. The authority may include the state's pledge
552 in the governing documents for utility cost containment bonds.

553 (8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other

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554 law, an authority that issued utility cost containment bonds may
555 not, and a governmental officer or organization may not
556 authorize the authority to, become a debtor under the United
557 States Bankruptcy Code or become the subject of any similar case
558 or proceeding under any other state or federal law if any
559 payment obligation from utility project property remains with
560 respect to the utility cost containment bonds.

561 (9) CONSTRUCTION.—This section and all grants of power and
562 authority in this section shall be liberally construed to
563 effectuate their purposes. All incidental powers necessary to
564 carry this section into effect are expressly granted to, and
565 conferred upon, public entities.

566 Section 2. Subsection (5) of section 153.03, Florida
567 Statutes, is amended to read:

568 153.03 General grant of power.—Any of the several counties
569 of the state which may hereafter come under the provisions of
570 this chapter as hereinafter provided is hereby authorized and
571 empowered:

572 (5) To acquire in the name of the county by gift, purchase
573 as hereinafter provided, or by the exercise of the right of
574 eminent domain, such lands and rights and interests therein,
575 including lands under water and riparian rights, and to acquire
576 such personal property as it may deem necessary for the
577 efficient operation or for the extension of or the improvement
578 of any facility purchased or constructed under the provisions of
579 this chapter and to hold and dispose of all real and personal
580 property under its control. Counties may also exercise such
581 eminent domain rights pursuant to an action initiated under s.
582 367.072. provided, However, that no county shall have the right

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583 to exercise the right of eminent domain over any such lands or
584 rights or interests therein or any personal property owned by
585 any municipality within the state nor to exercise such right
586 with respect to any privately owned water supply system or
587 sewage disposal system including without limitation ponds,
588 streams and surface waters constituting a part thereof, provided
589 any such system is primarily used, owned or operated by an
590 industrial or manufacturing plant for its own use as a water
591 supply system or in disposing of its industrial wastes.

592 Section 3. Section 367.072, Florida Statutes, is amended to
593 read:

594 367.072 Petition to revoke certificate of authorization;
595 condemnation.—The Legislature finds that it is in the public
596 interest that water service be of good quality, be priced at a
597 rate that is commensurate with the market and the quality of
598 service provided, and be consistent with the standards set forth
599 in this chapter. Furthermore, the Legislature declares that the
600 residents of the state have a right to participate in the
601 selection of their water service provider. Therefore, a
602 utility's certificate of authorization to provide water service
603 may be revoked ~~if,~~ after its customers file a petition to revoke
604 a certificate of authorization with the commission, ~~the~~
605 ~~commission finds that revocation is in the best interest of the~~
606 ~~customers in accordance with this section.~~ Upon the filing of
607 such petition, and owing to the demonstrated dissatisfaction
608 with the water service received by such customers, the county
609 where the customers are located also may deem it a public
610 necessity that the utility be brought under county ownership,
611 and may, upon its own election, begin condemnation by eminent

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612 domain proceedings against the utility. As used in this section,
613 the term "customer" means an individual whose property is
614 serviced by a single meter or a person whose name appears on the
615 bill for a master meter.

616 (1) (a) If the commission receives a letter from the
617 customers of a utility stating their intent to file a petition
618 pursuant to this section, the commission staff, within 10 days
619 after receipt of the letter, shall notify the utility of the
620 customers' intent to file a petition.

621 (b) Commission staff shall send to the customers
622 instructions regarding the information required on the petition
623 and the subsequent process the commission will follow. The
624 petition must be filed within 90 days after the receipt of the
625 instructions. Commission staff shall review the petition and
626 notify the customers within 10 days after receipt of the
627 petition that the petition is sufficient for the commission to
628 act or that additional information is necessary. The customers
629 must file a cured petition within 30 days after receipt of the
630 notice to cure and provide a copy of the petition to the
631 utility. If the customers fail to file or refile a petition
632 within the allotted time, the commission shall dismiss the
633 petition with prejudice, and the customers may not file another
634 petition for 1 year after the dismissal.

635 (c) Upon receipt of a properly filed petition, the
636 commission shall send to the county where the customers are
637 located a copy of the petition and notify such county of its
638 right to initiate condemnation by eminent domain proceedings
639 pursuant to this section and s. 153.03.

640 (2) A petition must:

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641 (a) State with specificity each issue that customers have
642 with the quality of water service, each time the issue was
643 reported to the utility, and how long each issue has existed;
644 and

645 (b) Be signed by at least 65 percent of the customers of
646 the service area covered under the certificate of authorization.
647 A person whose name appears on the bill for a master meter may
648 sign a petition if at least 65 percent of the customers,
649 tenants, or unit owners served by the master meter support the
650 petition, in which case documentation of such support must be
651 included with the petition.

652 (3) If the petition is in compliance with this section and
653 the issues identified within the petition support a reasonable
654 likelihood that the utility is failing to provide quality of
655 water service, the utility shall thereafter be prohibited from
656 filing a rate case until the commission has issued a final order
657 addressing the issues identified in the petition. The utility
658 shall use the following criteria in preparing a response to the
659 commission, addressing the issues identified within the petition
660 and defending the quality of its water service:

661 (a) Federal and state primary water quality standards or
662 secondary water quality standards pursuant to s. 367.0812; and

663 (b) The relationship between the utility and its customers,
664 including each complaint received regarding the quality of water
665 service, the length of time each customer has been complaining
666 about the service, the resolution of each complaint, and the
667 time it has taken to address such complaints.

668 (4) The commission shall evaluate the issues identified in
669 the petition, the utility's response as to whether it is

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670 providing quality of water service, and any other factor the
671 commission deems relevant.

672 (5) Based upon its evaluation, the commission shall:

673 (a) Dismiss the petition, in which case the decision must
674 be supported by clear and convincing evidence and is subject to
675 ss. 120.569 and 120.57; or

676 ~~(b) Require the utility to take the necessary steps to
677 correct the quality of water service issues identified in the
678 petition. The commission shall set benchmarks within a
679 timeframe, not to exceed 3 years, and may require the utility to
680 provide interim reports describing its progress in meeting such
681 benchmarks. The commission may extend the term 3 years for
682 circumstances that delay the project which are not in the
683 control of the utility, such as natural disasters and obtaining
684 permits necessary for meeting such benchmarks; or~~

685 (b)(e) Notwithstanding s. 367.045, revoke the utility's
686 certificate of authorization, in which case, any condemnation
687 proceedings initiated pursuant to this section must be dismissed
688 and a receiver must be appointed pursuant to s. 367.165 until a
689 sale of the utility system has been approved pursuant to s.
690 367.071.

691 (6) The commission shall adopt by rule the format of and
692 requirements for a petition and may adopt other rules to
693 administer this section.

694 Section 4. This act shall take effect July 1, 2016.

SUMMARY OF AMENDMENTS
TO
SB 840

<p>Amendment # 1 By Senator Garcia Barcode 325140 delete everything</p>	<p>The amendment deletes provisions:</p> <ul style="list-style-type: none">• requiring the Public Counsel to participate in Florida Municipal Power Agency (FMPA) proceedings; and• subjecting the FMPA to Public Service Commission jurisdiction, but not its ratemaking authority, <p>and retains the provisions:</p> <ul style="list-style-type: none">• requiring the FMPA to file an annual financial report; and• requiring that all members of the FMPA Board of Directors be elected city officials.
--	--

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: CS/SB 840

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Simpson

SUBJECT: Municipal Power Regulation

DATE: February 23, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 840 requires the Florida Municipal Power Agency (FMPA) to file an annual financial report and requires that all members of the FMPA Board of Directors be elected city officials.

II. Present Situation:

Florida Municipal Power Agency

The Florida Municipal Power Agency (FMPA) was created in 1978 by 13 municipalities through an interlocal agreement under s. 163.01, F.S.¹ for the purpose of providing wholesale power supply to municipal electric utilities.² FMPA currently has 31 municipality members.³ Through various joint power supply projects,⁴ FMPA supplies all of the electrical power needs of 13

¹ FLORIDA MUNICIPAL POWER AGENCY, *Sum of Our Efforts: 1978-2008*, page 3, http://fmpa.com/wp-content/uploads/2014/10/FMPA_History_Booklet_1978-2008.pdf (last visited February 12, 2016).

² FLORIDA MUNICIPAL POWER AGENCY, *About Overview*, <http://fmpa.com/about/overview/> (last visited February 12, 2016).

³ FMPA members are: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. FLORIDA MUNICIPAL POWER AGENCY, *Members*, <http://fmpa.com/about/members/> (last visited February 12, 2016).

⁴ Section 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further,

member utilities (referred to as “All-Requirements Project” or “ARP” members) and some of the power needs for seven other member utilities.⁵ Through these projects, FMPA members maintain ownership interests in various electrical power plants throughout Florida.⁶ According to its website, FMPA provides economies of scale in electrical power generation, allowing its members, through coordination of their individual power needs, to utilize larger, more efficient power plants and to diversify their power sources.⁷

FMPA is governed by a Board of Directors, with one Board member appointed by each member municipality. The Board decides all issues concerning each of FMPA’s power supply projects except the All-Requirements Project. The ARP is governed by an Executive Committee. Each member municipality of the ARP appoints one Executive Committee member. The Board is responsible for approving the rate structures for all non-ARP projects, and the Executive Committee is responsible for approving the rate structure for the ARP project.⁸ As required by law, the Board and Executive Committee must conduct their public business, including rate-setting, in open, public meetings after providing reasonable notice.⁹ A financial audit of FMPA is conducted annually by an independent auditor and is filed with the state.¹⁰

Pursuant to proviso language accompanying a specific appropriation in the 2014-2015 budget,¹¹ the State of Florida Auditor General was directed to retain subject matter experts to conduct a full audit of any entity created under s. 361.10, F.S.¹² The audit was required to analyze all revenues, expenditures, administrative costs, bond agreements, contracts, and employment records and to provide a complete review of the rates of such entities. Under this direction, the Auditor General retained consultants and conducted an operational audit of FMPA and submitted its final audit report to the Speaker of the House of Representatives and the President of the Senate in March 2015.¹³ The audit report produced 15 findings and recommendations related to FMPA’s hedging activities, investments, personnel and payroll administration, procurement practices, ARP contract provisions, and information technology practices. The audit report was

section 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.

⁵ FLORIDA MUNICIPAL POWER AGENCY, *Energy Overview*, <http://fmpa.com/energy/overview-2/> (last visited February 12, 2016). A few members do not purchase any power from FMPA. Overall, FMPA supplies more than 40 percent of its members’ total power needs. For a list of the projects and the cities participating in each project, see FLORIDA MUNICIPAL POWER AGENCY, *Projects*, <http://fmpa.com/energy/projects/> (last visited February 12, 2016).

⁶ FLORIDA MUNICIPAL POWER AGENCY, *Plants*, <http://fmpa.com/energy/plants/> (last visited February 12, 2016).

⁷ FLORIDA MUNICIPAL POWER AGENCY, *About Overview*, <http://fmpa.com/about/overview/> (last visited February 12, 2016).

⁸ State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015, at p.3.

⁹ Article I, section 24 of the Florida Constitution requires, among other things, that all meetings of any collegial body of a county or municipality at which public business is to be transacted must be open and noticed to the public. Section 286.011(1), F.S., implements this provision and applies it to any board or commissions of any political subdivision of the state, which includes boards formed by interlocal agreement. See 84-16, Fla. Op. Att’y Gen. (1984).

¹⁰ State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015 at 36 (Exhibit C, FMPA Management Response).

¹¹ Specific Appropriation 2685, 2014-2015 General Appropriations Act, Ch. 2014-51, Laws of Fla.

¹² The reference in the appropriation to s. 361.10, F.S., was likely misplaced. That section does not authorize the creation of any type of entity. Rather, it authorizes various types of existing utility entities to participate in joint electrical power supply projects.

¹³ State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015. The Auditor General did not audit any other entities that participate in joint electrical power supply projects authorized by s. 361.10, F.S.

presented to the Joint Legislative Auditing Committee on March 30, 2015, with a follow-up discussion on October 5, 2015.¹⁴

III. Effect of Proposed Changes:

The bill amends s. 163.01, F.S., the Florida Interlocal Cooperation Act of 1969, under which the FMPA was created. The bill requires any “entity created pursuant to this section that supplies electricity through an interlocal agreement to its member municipalities,” which would include only the FMPA, to file an annual report with the Public Service Commission, the Public Counsel, and each member municipality that participates in the electric power project. The report must contain an independently prepared financial statement for each individual generation asset, with each financial statement required to include:

- A balance sheet that reflects assets and liabilities associated with each generation asset.
- An income statement that reflects each generation asset’s operational and financial activities for the reporting period, with any gains or losses from hedging activities associated with the generation asset separately itemized.
- A statement of cash flows that identifies changes in the generation asset’s cash flows during the reporting period.
- The current fair market value for each generation asset, determined by assuming the price that a willing buyer would pay a willing seller for the generation asset, with neither party being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts, and assuming all risk of ownership, loss, and decommissioning, as applicable. The current fair market value statement must include the overall fair market value of the generation asset as a whole and each member municipality’s equity position net of the entity’s debt, based on the current fair market generation asset value. The current fair market value statement must include, after considering the market value of the generation assets, the net return of equity or the cost to exit the entity for each member municipality.

There are two issues with the reporting requirements. The first is that the reporting requirements appear to be an attempt to establish an alternative mechanism for determining the amount of an All-Requirements project participants’ withdrawal payment. This is based on the following:

- One of the issues in the Auditor General’s report was some municipalities’ inability to obtain, or dissatisfaction with, estimated withdrawal payments.¹⁵
- The bill states:
WHEREAS, certain All-Requirements project contract provisions relating to the withdrawal of members are ambiguous, use a fixed discount rate rather than one based on current capital costs, and do not provide for independent verification by a withdrawing member.¹⁶
- The reporting requirements build, step by step, towards establishing “the current fair market value for each generation asset.”

¹⁴ At the October 5, 2015, meeting of the Joint Legislative Auditing Committee, FMPA indicated that it had addressed 10 of the 15 audit report findings and anticipated addressing the remaining findings by the end of 2015. FMPA committed to provide the committee with progress reports every 60 days until each of the audit report’s findings have been addressed. The committee indicated that it may conduct additional meetings to discuss FMPA’s progress.

¹⁵ State of Florida Auditor General, *Operational Audit of Florida Municipal Power Agency, Report No. 2015-165*, March 2015, p. 27.

¹⁶ Lines 59-63.

It is unknown what the All-Requirements project contracts provide relating to member withdrawal or calculation of withdrawal payments; the Auditor General report does not contain this information and a contract is not available. It can be determined, however, that the purpose of participation in the FMPA projects is:

- Economies of Scale: By coordinating their power needs, local utilities can build larger, more efficient power plants and diversify their power sources.
- Access to Resources: FMPA members have access to the resources of a statewide organization, including FMPA's professional staff and more than two dozen services.
- Strength in Numbers: Working together enables municipal utilities to pool their resources in beneficial ways, such as planning, operating, negotiating, advocating and more.¹⁷

The purpose of participating in an FMPA project appears to be to pool resources to minimize costs and risks, not to invest in an asset that will appreciate and provide a profit upon its sale. Thus it is highly likely that the point of the contract would be to ensure that FMPA recovers all costs from participant members in the correct proportions, without cost-shifting among members. What would be relevant then is outstanding cost of the asset, and the proportion of that cost attributable to each member, not the asset's value.

The second issue is that "fair market value" is not the same concept when applied to assets in a regulated industry. In a regulated electricity market, the pool of potential buyers is limited; only another utility can buy the plant. And the pool is further limited in that a utility will buy a power plant only if it has a current or projected need for that particular type of plant. Therefore, to meaningfully project who might be a willing buyer, let alone the conditions and price for the transaction may be difficult.

The bill also requires that each member of the FMPA's Board of Directors be an elected official from a member municipality. Current board members who are not elected officials may continue to serve until expiration of their terms but no later than July 1, 2018.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ FLORIDA MUNICIPAL POWER AGENCY, *About Overview*, <http://fmpa.com/about/overview/> (last visited February 12, 2016).

D. **Other Constitutional Issues:**

Section 10 Article I of the Florida Constitution prohibits any law impairing the obligation of contracts. As is noted above, the financial reporting requirements appear to establish a method of calculating an All-Requirements Project member's withdrawal payments. If these calculations and the resulting withdrawal payment amount conflict with the contractual provisions for establishing the member's amount of withdrawal payments, the bill may be subject to challenge.

V. **Fiscal Impact Statement:**

A. **Tax/Fee Issues:**

None.

B. **Private Sector Impact:**

FMPA may incur costs to comply with the financial reporting requirements imposed by the bill.

C. **Government Sector Impact:**

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 163.01 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications, Energy, and Public Utilities on February 23, 2016:

The CS deletes provisions requiring the Public Counsel to participate in Florida Municipal Power Agency (FMPA) proceedings, and subjecting the FMPA to Public Service Commission jurisdiction, but not its ratemaking authority.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



325140

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/23/2016	.	
	.	
	.	
	.	

The Committee on Communications, Energy, and Public Utilities (Garcia) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (19) is added to section 163.01,
Florida Statutes, to read:

163.01 Florida Interlocal Cooperation Act of 1969.—

(19) (a) Any entity created pursuant to this section that
supplies electricity through an interlocal agreement to its
member municipalities shall annually submit to the Public



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11 Service Commission and each member municipality that
12 participates in the electric power project an independently
13 prepared financial statement for each individual generation
14 asset. The financial statement must include:
15 1. A balance sheet that reflects assets and liabilities
16 associated with each generation asset, including the plant in
17 service, accumulated additions and removals, net plant,
18 depreciation, operations and maintenance expenses, allocations,
19 and any other material asset and liability categories.
20 2. An income statement that reflects each generation
21 asset's operational and financial activities for the reporting
22 period, including revenues, expenses, gains, and losses. Any
23 gains or losses from hedging activities associated with the
24 generation asset shall be separately itemized.
25 3. A statement of cash flows that identifies changes in the
26 generation asset's cash flows during the reporting period.
27 4. The current fair market value for each generation asset.
28 The current fair market value shall be determined assuming the
29 price that a willing buyer would pay a willing seller for the
30 generation asset, with neither party being under any compulsion
31 to buy or sell and both having reasonable knowledge of relevant
32 facts, and assuming all risk of ownership, loss, and
33 decommissioning, as applicable. The current fair market value
34 statement shall include the overall fair market value of the
35 generation asset as a whole and each member municipality's
36 equity position net of the entity's debt, based on the current
37 fair market generation asset value. The current fair market
38 value statement shall include, after considering the market
39 value of the generation assets, the net return of equity or the



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40 cost to exit the entity for each member municipality.

41 (b) To serve as a member of the governing body of an entity
42 created pursuant to this section for the purpose of supplying
43 electricity to its member municipalities, each member of the
44 governing body must be an elected official from one of the
45 entity's member municipalities. Current members of a governing
46 body of such an entity who are not elected officials may
47 continue to serve until expiration of their terms but no later
48 than July 1, 2018.

49 Section 2. This act shall take effect July 1, 2016.

50
51 ===== T I T L E A M E N D M E N T =====

52 And the title is amended as follows:

53 Delete everything before the enacting clause
54 and insert:

55 A bill to be entitled
56 An act relating to municipal power regulation;
57 amending s. 163.01, F.S.; requiring certain entities
58 created under the Interlocal Cooperation Act of 1969
59 to submit independently prepared financial statements
60 for certain electric power projects to specified
61 public entities; providing statement requirements;
62 providing eligibility requirements for membership on
63 the governing body of certain entities created under
64 the Interlocal Cooperation Act of 1969; providing an
65 effective date.

66
67 WHEREAS, The Florida Municipal Power Agency is a joint-use
68 action agency created pursuant to a series of interlocal



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69 agreements with the state's municipalities to finance, acquire,
70 contract, manage, and operate its own electric power projects or
71 jointly accomplish the same purposes with other public or
72 private utilities, and

73 WHEREAS, the Florida Municipal Power Agency is governed by
74 a board of directors, consisting of one board member from each
75 member municipality, which decides all issues concerning each
76 project except for the "All-Requirements" power supply project,
77 and

78 WHEREAS, the All-Requirements power supply project is
79 governed by an executive committee, with each All-Requirements
80 project member municipality that purchases power from the
81 project appointing one executive committee member, and

82 WHEREAS, the Auditor General conducted an operational audit
83 of the Florida Municipal Power Agency and released Report No.
84 2015-165 to the Joint Legislative Auditing Committee on March
85 30, 2015, which included findings and recommendations, and

86 WHEREAS, the Auditor General found many of the Florida
87 Municipal Power Agency's hedging activities to be inconsistent
88 with other joint-use action agencies, leading to net losses of
89 \$247.6 million over the past 12 fiscal years, and

90 WHEREAS, the Auditor General concluded that several of the
91 Florida Municipal Power Agency's personnel and payroll
92 administration activities may negatively affect future rates,
93 including the Chief Executive Officer's employment contract that
94 provides severance pay and lifetime benefits even if employment
95 is terminated for cause, and

96 WHEREAS, the Florida Municipal Power Agency did not
97 consistently follow its own procurement and competitive



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98 selection policies, one of which may increase the cost of future
99 bond issues, and

100 WHEREAS, the Florida Municipal Power Agency's All-
101 Requirements project agreement to curtail peak-shaving
102 activities is primarily voluntary, relies on self-reporting, and
103 contains no penalties for noncompliance, and

104 WHEREAS, certain All-Requirements project contract
105 provisions relating to the withdrawal of members are ambiguous,
106 use a fixed discount rate rather than one based on current
107 capital costs, and do not provide for independent verification
108 by a withdrawing member, and

109 WHEREAS, even though the Florida Municipal Power Agency is
110 a governmental entity, many of the laws that apply to local
111 governments do not apply to the agency, and

112 WHEREAS, the Florida Municipal Power Agency is not subject
113 to any rate-setting authority, including by the Public Service
114 Commission, and

115 WHEREAS, there exists a need to promote transparency and
116 consistency and to increase public understanding and confidence
117 in the operation of the Florida Municipal Power Agency by the
118 member municipalities and the public, including those electric
119 ratepayers who are not residents of the municipality supplying
120 electric power but who are subject to a municipality that is
121 receiving power from the agency, NOW, THEREFORE,

By Senator Simpson

18-00767-16

2016840__

1 A bill to be entitled
2 An act relating to municipal power regulation;
3 amending s. 163.01, F.S.; requiring certain entities
4 created under the Interlocal Cooperation Act of 1969
5 to submit independently prepared financial statements
6 for certain electric power projects to specified
7 public entities; providing statement requirements;
8 providing eligibility requirements for membership on
9 the governing body of certain entities created under
10 the Interlocal Cooperation Act of 1969; amending s.
11 350.0611, F.S.; expanding the duties of the Public
12 Counsel to include proceedings involving the Florida
13 Municipal Power Agency; amending s. 366.02, F.S.;
14 revising the definition of the term "public utility"
15 to include the Florida Municipal Power Agency;
16 defining the term "Florida Municipal Power Agency";
17 amending s. 366.04, F.S.; exempting the agency from
18 regulation by the Public Service Commission for
19 purposes of rates and service; providing an effective
20 date.

21
22 WHEREAS, The Florida Municipal Power Agency is a joint-use
23 action agency created pursuant to a series of interlocal
24 agreements with the state's municipalities to finance, acquire,
25 contract, manage, and operate its own electric power projects or
26 jointly accomplish the same purposes with other public or
27 private utilities, and

28 WHEREAS, the Florida Municipal Power Agency is governed by
29 a board of directors, consisting of one board member from each

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2016840__

30 member municipality, which decides all issues concerning each
31 project except for the "All-Requirements" power supply project,
32 and

33 WHEREAS, the All-Requirements power supply project is
34 governed by an executive committee, with each All-Requirements
35 project member municipality that purchases power from the
36 project appointing one executive committee member, and

37 WHEREAS, the Auditor General conducted an operational audit
38 of the Florida Municipal Power Agency and released Report No.
39 2015-165 to the Joint Legislative Auditing Committee on March
40 30, 2015, which included findings and recommendations, and

41 WHEREAS, the Auditor General found many of the Florida
42 Municipal Power Agency's hedging activities to be inconsistent
43 with other joint-use action agencies, leading to net losses of
44 \$247.6 million over the past 12 fiscal years, and

45 WHEREAS, the Auditor General concluded that several of the
46 Florida Municipal Power Agency's personnel and payroll
47 administration activities may negatively affect future rates,
48 including the Chief Executive Officer's employment contract that
49 provides severance pay and lifetime benefits even if employment
50 is terminated for cause, and

51 WHEREAS, the Florida Municipal Power Agency did not
52 consistently follow its own procurement and competitive
53 selection policies, one of which may increase the cost of future
54 bond issues, and

55 WHEREAS, the Florida Municipal Power Agency's All-
56 Requirements project agreement to curtail peak-shaving
57 activities is primarily voluntary, relies on self-reporting, and
58 contains no penalties for noncompliance, and

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2016840__

59 WHEREAS, certain All-Requirements project contract
60 provisions relating to the withdrawal of members are ambiguous,
61 use a fixed discount rate rather than one based on current
62 capital costs, and do not provide for independent verification
63 by a withdrawing member, and

64 WHEREAS, even though the Florida Municipal Power Agency is
65 a governmental entity, many of the laws that apply to local
66 governments do not apply to the agency, and

67 WHEREAS, the Florida Municipal Power Agency is not subject
68 to any rate-setting authority, including by the Public Service
69 Commission, and

70 WHEREAS, there exists a need to promote transparency and
71 consistency and to increase public understanding and confidence
72 in the operation of the Florida Municipal Power Agency by the
73 member municipalities and the public, including those electric
74 ratepayers who are not residents of the municipality supplying
75 electric power but who are subject to a municipality that is
76 receiving power from the agency, NOW, THEREFORE,

77

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

79

80 Section 1. Subsection (19) is added to section 163.01,
81 Florida Statutes, to read:

82 163.01 Florida Interlocal Cooperation Act of 1969.—

83 (19) (a) Any entity created pursuant to this section that
84 supplies electricity through an interlocal agreement to its
85 member municipalities shall annually submit to the Public
86 Service Commission, the Public Counsel, and each member
87 municipality that participates in the electric power project an

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88 independently prepared financial statement for each individual
89 generation asset. The financial statement must include:

90 1. A balance sheet that reflects assets and liabilities
91 associated with each generation asset, including the plant in
92 service, accumulated additions and removals, net plant,
93 depreciation, operations and maintenance expenses, allocations,
94 and any other material asset and liability categories.

95 2. An income statement that reflects each generation
96 asset's operational and financial activities for the reporting
97 period, including revenues, expenses, gains, and losses. Any
98 gains or losses from hedging activities associated with the
99 generation asset shall be separately itemized.

100 3. A statement of cash flows that identifies changes in the
101 generation asset's cash flows during the reporting period.

102 4. The current fair market value for each generation asset.
103 The current fair market value shall be determined assuming the
104 price that a willing buyer would pay a willing seller for the
105 generation asset, with neither party being under any compulsion
106 to buy or sell and both having reasonable knowledge of relevant
107 facts, and assuming all risk of ownership, loss, and
108 decommissioning, as applicable. The current fair market value
109 statement shall include the overall fair market value of the
110 generation asset as a whole and each member municipality's
111 equity position net of the entity's debt, based on the current
112 fair market generation asset value. The current fair market
113 value statement shall include, after considering the market
114 value of the generation assets, the net return of equity or the
115 cost to exit the entity for each member municipality.

116 (b) To serve as a member of the governing body of an entity

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117 created pursuant to this section for the purpose of supplying
118 electricity to its member municipalities, each member of the
119 governing body must be an elected official from one of the
120 entity's member municipalities. Current members of a governing
121 body of such an entity who are not elected officials may
122 continue to serve until expiration of their terms but no later
123 than July 1, 2018.

124 Section 2. Section 350.0611, Florida Statutes, is amended
125 to read:

126 350.0611 Public Counsel; duties and powers.—It shall be the
127 duty of the Public Counsel to provide legal representation for
128 the people of the state in proceedings before the commission,
129 and in proceedings before counties pursuant to s. 367.171(8),
130 and in proceedings before the Florida Municipal Power Agency.

131 The Public Counsel shall have such powers as are necessary to
132 carry out the duties of his or her office, including, but not
133 limited to, the following specific powers:

134 (1) To recommend to the commission, ~~or~~ the counties, or the
135 Florida Municipal Power Agency, by petition, the commencement of
136 any proceeding or action or to appear, in the name of the state
137 or its citizens, in any proceeding or action before the
138 commission, ~~or~~ the counties, or the agency, and urge therein any
139 position which he or she deems to be in the public interest,
140 whether consistent or inconsistent with positions previously
141 adopted by the commission, ~~or~~ the counties, or the agency, and
142 utilize therein all forms of discovery available to attorneys in
143 civil actions generally, subject to protective orders of the
144 commission or the counties which shall be reviewable by summary
145 procedure in the circuit courts of this state;

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146 (2) To have access to and use of all files, records, and
147 data of the commission, ~~or~~ the counties, or the Florida
148 Municipal Power Agency available to any other attorney
149 representing parties in a proceeding before the commission, ~~or~~
150 the counties, or the agency;

151 (3) In any proceeding in which he or she has participated
152 as a party, to seek review of any determination, finding, or
153 order of the commission, ~~or~~ the counties, the Florida Municipal
154 Power Agency, or ~~of~~ any hearing examiner designated by the
155 commission, ~~or~~ the counties, or the agency, in the name of the
156 state or its citizens;

157 (4) To prepare and issue reports, recommendations, and
158 proposed orders to the commission, the Governor, and the
159 Legislature on any matter or subject within the jurisdiction of
160 the commission or the Florida Municipal Power Agency, and to
161 make such recommendations as he or she deems appropriate for
162 legislation relative to commission or agency procedures, rules,
163 jurisdiction, personnel, and functions; and

164 (5) To appear before other state agencies, federal
165 agencies, and state and federal courts in connection with
166 matters under the jurisdiction of the commission or the Florida
167 Municipal Power Agency, in the name of the state or its
168 citizens.

169
170 As used in this section, the term "Florida Municipal Power
171 Agency" or "agency" has the same meaning as provided in s.
172 366.02.

173 Section 3. Subsection (1) of section 366.02, Florida
174 Statutes, is amended, and subsection (4) is added to that

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175 section, to read:

176 366.02 Definitions.—As used in this chapter:

177 (1) "Public utility" means every person, corporation,
178 partnership, association, or other legal entity and their
179 lessees, trustees, or receivers supplying electricity or gas
180 (natural, manufactured, or similar gaseous substance) to or for
181 the public within this state, including the Florida Municipal
182 Power Agency. However, ~~but~~ the term "public utility" does not
183 include either a cooperative now or hereafter organized and
184 existing under the Rural Electric Cooperative Law of the state;
185 a municipality or any agency thereof; any dependent or
186 independent special natural gas district; any natural gas
187 transmission pipeline company making only sales or
188 transportation delivery of natural gas at wholesale and to
189 direct industrial consumers; any entity selling or arranging for
190 sales of natural gas which neither owns nor operates natural gas
191 transmission or distribution facilities within the state; or a
192 person supplying liquefied petroleum gas, in either liquid or
193 gaseous form, irrespective of the method of distribution or
194 delivery, or owning or operating facilities beyond the outlet of
195 a meter through which natural gas is supplied for compression
196 and delivery into motor vehicle fuel tanks or other
197 transportation containers, unless such person also supplies
198 electricity or manufactured or natural gas.

199 (4) "Florida Municipal Power Agency" means the legal
200 entity, or a successor entity, formed under s. 163.01 by
201 interlocal agreement among municipalities.

202 Section 4. Subsection (1) of section 366.04, Florida
203 Statutes, is amended to read:

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204 366.04 Jurisdiction of commission.—

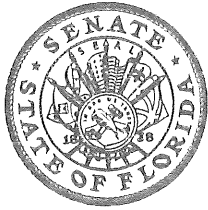
205 (1) In addition to its existing functions, the commission
206 shall have jurisdiction to regulate and supervise each public
207 utility with respect to its rates and service, except for the
208 Florida Municipal Power Agency; assumption by it of liabilities
209 or obligations as guarantor, endorser, or surety; and the
210 issuance and sale of its securities, except a security which is
211 a note or draft maturing not more than 1 year after the date of
212 such issuance and sale and aggregating (together with all other
213 then-outstanding notes and drafts of a maturity of 1 year or
214 less on which such public utility is liable) not more than 5
215 percent of the par value of the other securities of the public
216 utility then outstanding. In the case of securities having no
217 par value, the par value for the purpose of this section shall
218 be the fair market value as of the date of issue. The
219 commission, upon application by a public utility, may authorize
220 the utility to issue and sell securities of one or more
221 offerings, or of one or more types, over a period of up to 12
222 months; or, if the securities are notes or drafts maturing not
223 more than 1 year after the date of issuance and sale, the
224 commission, upon such application, may authorize the utility to
225 issue and sell such securities over a period of up to 24 months.
226 The commission may take final action to grant an application by
227 a public utility to issue and sell securities or to assume
228 liabilities or obligations after having given notice in the
229 Florida Administrative Register published at least 7 days in
230 advance of final agency action. In taking final action on such
231 application, the commission may deny authorization for the
232 issuance or sale of a security or assumption of a liability or

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233 obligation if the security, liability, or obligation is for
234 nonutility purposes; and shall deny authorization for the
235 issuance or sale of a security or assumption of a liability or
236 obligation if the financial viability of the public utility is
237 adversely affected such that the public utility's ability to
238 provide reasonable service at reasonable rates is jeopardized.
239 Securities issued by a public utility or liabilities or
240 obligations assumed by a public utility as guarantor, endorser,
241 or surety pursuant to an order of the commission, which order is
242 certified by the clerk of the commission and which order
243 approves or authorizes the issuance and sale of such securities
244 or the assumption of such liabilities or obligations, shall not
245 be invalidated by a modification, repeal, or amendment to that
246 order or by a supplemental order; however, the commission's
247 approval of the issuance of securities or the assumption of
248 liabilities or obligations shall constitute approval only as to
249 the legality of the issue or assumption, and in no way shall it
250 be considered commission approval of the rates, service,
251 accounts, valuation, estimates, or determinations of cost or any
252 other such matter. The jurisdiction conferred upon the
253 commission shall be exclusive and superior to that of all other
254 boards, agencies, political subdivisions, municipalities, towns,
255 villages, or counties, and, in case of conflict therewith, all
256 lawful acts, orders, rules, and regulations of the commission
257 shall in each instance prevail.

258 Section 5. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Environmental Preservation and
Conservation, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

SENATOR CHARLES S. DEAN, SR.

5th District

February 23, 2016

The Honorable Denise Grimsley
306 Senate Office Building
404 South Monroe St.
Tallahassee, FL 32399-1100

Dear Chair Grimsley,

The purpose of this letter is to seek your permission to be excused from the scheduled committee meeting on Communications, Energy, and Public Utilities on February 23, 2016. Due to prior commitments, I will not be able to attend.

Should you have any questions concerning this matter, please do not hesitate to contact me personally.

Sincerely,

A handwritten signature in black ink that reads "Charles S. Dean".

Charles S. Dean
State Senator District 5

CC: Diana Caldwell, Staff Director

REPLY TO:

- 405 Tompkins Street, Inverness, Florida 34450 (352) 860-5175
- 311 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005
- 315 SE 25th Avenue, Ocala, Florida 34471-2689 (352) 873-6513

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/13/16

Meeting Date

324

Bill Number (if applicable)

365134 ✗

Amendment Barcode (if applicable)

Topic Cost Containment Bonds

Name Frank Bernardino

Job Title _____

Address 201 W. Park Ave, Suite 100

Phone (561) 718-2345

Street

Tallahassee FL 32301

Email Frank@arnfieldFlorida.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla. Section of American Water Works Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-23-2016

Meeting Date

324

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/23/16

Meeting Date

840

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Commissioner Tim Zorc

Job Title County Commissioner

Address 1801 2TH STREET

Phone 772-226-1492

Street VERO BEACH, FL

32960

Email TZORC@1RCGOV.CE

City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Indian River County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/23/16
Meeting Date

840
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Dylan Reingold

Job Title County Attorney

Address 130 Chinaberry Ln.
Street

Phone 772-226-1427

Indian River Shores, FL 32963
City State Zip

Email dreingold@ircgov.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Indian River County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Feb. 23, 2016

SB 840

Meeting Date

Bill Number (if applicable)

Topic Municipal Power Regulation

Amendment Barcode (if applicable)

Name Bob Nave

Job Title Vice President of Research

Address 106 N. Bronough Street

Phone 850.222.5052

Street

Tallahassee

FL

32301

Email bnav@floridatxwatch.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida TaxWatch

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/23/16

Meeting Date

SB 840

Bill Number (if applicable)

Topic SB 840

Amendment Barcode (if applicable)

Name GLENN HERAN

Job Title PRIVATE CITIZEN

Address 1964 GREY FALCON Cir SW

Phone (772) 473-7629

Street

VERO BEACH, FL 32962

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

2/23/2016

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

840

Bill Number (if applicable)

~~325140~~

Amendment Barcode (if applicable)

Topic SB 840

Name Bill Conrad

Job Title Mayor, City of Newberry

Address 345 SW 255 ST

Street

Newberry

City

FL

State

32609

Zip

Phone 352 215 1737

Email bill.conrad@ci.newberry.fl.us

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FMIPA & City of Newberry

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/23/2016
Meeting Date

890
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S

Phone 727/897-7291

Street

St Petersburg
City

FL
State

33705
Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/23/2016

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 840

Bill Number (if applicable)

Topic SB 840

Amendment Barcode (if applicable)

Name MARK LARSON

Job Title ASSIST GM & CFO

Address 8553 COMMODITY CIRCLE

Street

Phone 407 947 4197

ORLANDO

City

FL

State

32819

Zip

Email MARK.LARSON@FMPA.COM

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing FLORIDA MUNICIPAL POWER AGENCY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-23-16

Meeting Date

SB 840

Bill Number (if applicable)

Topic FMPA

Amendment Barcode (if applicable)

Name PETER H. BATTY

Job Title CHAIRMAN, KEYS ENERGY

Address 912 GEORGIA ST.

Street

Phone 305 797 0656

KEY WEST FL 33040

City

State

Zip

Email PBATTY@SBXREAL
ESTATES.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing KEYS ENERGY SERVICES

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/12/13
Meeting Date

5B840
Bill Number (if applicable)

Topic 5B840

Amendment Barcode (if applicable)

Name Dean Cannon

Job Title _____

Address 307 S Broadway St

Phone _____

Street

Tall
City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FMPA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

February 23, 2016

Meeting Date

Bill Number (if applicable)

Topic Senate Bill 840

Amendment Barcode (if applicable)

Name Van Royal

Job Title Mayor, City of Green Cove Springs

Address 321 Walnut Street

Street

Phone 904 297-7500

Green Cove Springs

FL

32043

Email vroyal@greencovesprings.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing City of Green Cove Springs

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

CourtSmart Tag Report

Room: SB 301

Case No.:

Type:

Caption: Senate Communications, Energy, and Public Utilities Committee

Judge:

Started: 2/23/2016 1:32:25 PM

Ends: 2/23/2016 2:43:27 PM

Length: 01:11:03

1:32:25 PM Meeting called to order
1:32:30 PM Roll call
1:32:43 PM Quorum present
1:32:51 PM Senator Dean excused
1:32:59 PM Tab 1 SB 324 presented by Senator Legg
1:33:55 PM Amendment 365134 introduced
1:34:02 PM Amendment 365134 presented by Senator Legg
1:34:24 PM Frank Bernardino waives in support of Amendment 365134
1:34:39 PM Amendment 365134 adopted
1:34:54 PM Amendment 494824, late-filed, introduced
1:35:01 PM Amendment 494824 presented by Senator Legg
1:35:40 PM Amendment 494824 adopted
1:36:03 PM Brian Pitts with Justice-2-Jesus recognized to speak
1:39:29 PM Roll call on CS/CS/SB 324
1:39:43 PM CS/CS/SB 324 reported favorably
1:40:02 PM Tab 2 SB 840 Municipal Power Regulation presented by Senator Simpson
1:40:21 PM Amendment 325140, strike-all, presented by Senator Simpson
1:41:02 PM Senator Hukill with question
1:41:10 PM Senator Simpson with response for Senator Hukill
1:41:38 PM Senator Hukill with follow-up
1:41:43 PM Senator Simpson with response
1:41:50 PM Senator Hukill with follow-up
1:41:53 PM Senator Simpson response
1:41:58 PM Senator Hukill with follow-up
1:42:08 PM Senator Simpson with response to Senator Hukill
1:42:25 PM Senator Gibson with question
1:42:31 PM Senator Simpson with response
1:42:41 PM Senator Gibson with follow-up
1:43:03 PM Senator Simpson with response
1:43:25 PM Senator Gibson with follow-up question
1:43:38 PM Senator Simpson with response
1:43:55 PM Senator Gibson with clarification
1:44:24 PM Amendment 325140 adopted
1:44:37 PM Senator Hukill with question
1:44:46 PM Senator Simpson with response for Senator Hukill
1:45:27 PM Senator Hukill with follow-up question
1:45:52 PM Senator Simpson with response
1:46:04 PM Senator Hukill with follow-up
1:46:10 PM Senator Simpson with response
1:46:33 PM Tim Zoz waives in support
1:46:55 PM Dylan Reingold with Indian River County recognized to speak
1:48:27 PM Bob Nave with Florida TaxWatch recognized to speak
1:50:08 PM Senator Gibson with question for Bob Nave
1:50:20 PM Bob Nave with response for Senator Gibson
1:50:43 PM Senator Gibson with follow-up
1:50:50 PM Bob Nave with response for Senator Gibson
1:51:29 PM Senator Hukill with question for Bob Nave
1:51:39 PM Bob Nave with response for Senator Hukill
1:51:46 PM Senator Hukill with follow-up
1:52:07 PM Bob Nave with response for Senator Hukill
1:53:23 PM Glenn Heran recognized to speak
1:56:34 PM Bill Conrad from the City of Newberry recognized to speak

2:02:13 PM Senator Gibson with question for Bill Conrad
2:02:17 PM Bill Conrad response
2:02:42 PM Senator Gibson follow-up
2:02:55 PM Bill Conrad with response
2:03:00 PM Senator Gibson with follow-up
2:03:25 PM Bill Conrad with response
2:03:31 PM Senator Gibson clarification
2:03:35 PM Bill Conrad response
2:05:01 PM Senator Hutson with question for Bill Conrad
2:05:24 PM Bill Conrad with response
2:05:46 PM Senator Hutson with follow up
2:05:49 PM Bill Conrad response
2:05:53 PM Senator Sachs with question
2:06:01 PM Bill Conrad with response
2:07:11 PM Brian Pitts with Justice-2-Jesus recognized to speak
2:12:49 PM Mark Larson, CFO for FMPA, recognized to speak
2:15:05 PM Senator Bradley with question for Mark Larson
2:15:46 PM Mark Larson with response for Senator Bradley
2:15:59 PM Senator Bradley with follow-up question for Mark Larson
2:16:05 PM Mark Larson with response
2:16:12 PM Senator Bradley with follow-up question
2:16:26 PM Mark Larson with response for Senator Bradley
2:16:38 PM Senator Bradley with clarification
2:16:49 PM Mark Larson with response for Senator Bradley
2:16:59 PM Senator Bradley with follow-up question
2:17:08 PM Mark Larson with response for Senator Bradley
2:17:33 PM Senator Gibson with question
2:17:49 PM Mark Larson with response for Senator Gibson
2:18:50 PM Senator Gibson with follow-up question for Mark Larson
2:19:00 PM Mark Larson with response for Senator Gibson
2:20:20 PM Peter Batty with Keys Energy Services recognized to speak
2:22:57 PM Dean Cannon with FMPA recognized to speak
2:27:35 PM Senator Hutson with question for Dean Cannon
2:27:55 PM Dean Cannon with response for Senator Hutson
2:29:11 PM Senator Hutson with follow-up question
2:29:22 PM Dean Cannon with response for Senator Hutson
2:29:56 PM Senator Sachs with question for Dean Cannon
2:30:15 PM Dean Cannon with response for Senator Sachs
2:30:35 PM Senator Sachs with follow-up
2:31:15 PM Dean Cannon with response for Senator Sachs
2:31:40 PM Senator Sachs with another follow-up
2:31:48 PM Dean Cannon with response to Senator Sachs
2:32:22 PM Senator Sachs with clarification
2:32:31 PM Senator Gibson with question for Dean Cannon
2:32:35 PM Dean Cannon with response
2:32:53 PM Senator Gibson with clarification
2:32:55 PM Dean Cannon response
2:33:00 PM Senator Gibson with follow-up
2:33:04 PM Dean Cannon with response
2:33:36 PM Senator Hukill recognized in debate on SB 840
2:35:30 PM Senator Bradley recognized in debate
2:36:34 PM Senator Hutson recognized in debate
2:37:18 PM Senator Gibson recognized in debate
2:39:16 PM Senator Sachs recognized in debate
2:40:10 PM Senator Simpson recognized to close on SB 840
2:42:56 PM Roll call on CS/SB 840
2:43:11 PM CS/SB 840 reported favorably
2:43:20 PM Meeting adjourned