

1 A bill to be entitled

2 An act relating to utility cost containment bonds;
3 providing a short title; defining terms; authorizing
4 an authority under specified conditions to finance or
5 refinance utility projects on behalf of local agencies
6 using cost containment bonds; authorizing an authority
7 to form a limited liability company or a single
8 purpose entity to finance or refinance a utility
9 project; providing criteria for use by a local agency
10 in applying to an authority for the financing of a
11 utility project; identifying when utility project
12 charges become effective and how they are to be paid;
13 providing parameters for the use of utility cost
14 containment bonds; prohibiting utility cost
15 containment bond documents from obligating the state
16 or a political subdivision thereof to enact a tax or
17 make an appropriation to pay the bonds; providing that
18 financing costs do not constitute a liability on the
19 state or a political subdivision thereof; providing
20 other restrictions on the type of legal obligations
21 that financing costs constitute; clarifying that
22 utility project property constitutes property;
23 identifying the lien priority of the utility project
24 property in securing payment of the bonds; prohibiting
25 an authority, or a governmental officer or an
26 organization on its behalf, from filing bankruptcy;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

27 providing for liberal construction; providing an
 28 effective date.

29
 30 Be It Enacted by the Legislature of the State of Florida:

31
 32 Section 1. (1) SHORT TITLE.—This section may be cited as
 33 the "Utility Cost Containment Bond Act."

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

35 (a) "Authority" means an entity, including a successor to
 36 the powers and functions of such entity, created pursuant to s.
 37 163.01(7)(g), Florida Statutes, that provides public utility
 38 services and whose membership consists of at least three
 39 counties.

40 (b) "Cost," as applied to a utility project or portion of
 41 a utility project financed under this section, means all of the
 42 following:

43 1. Any part of the cost of constructing, renovating, or
 44 acquiring lands, structures, real or personal property, rights,
 45 rights-of-way, franchises, easements, and interests acquired or
 46 used for a utility project.

47 2. The cost of demolishing or removing any buildings or
 48 structures on land so acquired, including the cost of acquiring
 49 any lands to which the buildings or structures may be moved, and
 50 the cost of all machinery and equipment used for demolishing or
 51 removing such buildings or structures.

52 3. Finance charges.

- 53 4. Interest, as determined by the authority.
- 54 5. Provisions for working capital and debt service
55 reserves.
- 56 6. Costs for extensions, enlargements, additions,
57 replacements, renovations, and improvements.
- 58 7. The cost of architectural, engineering, financial, and
59 accounting services, plans, specifications, and estimates. The
60 term also includes administrative expenses and legal services.
- 61 8. Other expenses necessary or incidental to determining
62 the feasibility of constructing a utility project or incidental
63 to the construction, acquisition, or financing of a utility
64 project.
- 65 (c) "Customer" means a person receiving water, wastewater,
66 electric, or stormwater service from a publicly owned utility.
- 67 (d) "Financing cost" means any of the following:
- 68 1. Interest and redemption premiums that are payable on
69 utility cost containment bonds.
- 70 2. The cost of retiring the principal of utility cost
71 containment bonds, whether at maturity, including acceleration
72 of maturity upon an event of default, or upon redemption,
73 including sinking fund redemption.
- 74 3. The cost of issuing or servicing utility cost
75 containment bonds, including payment under an interest rate swap
76 agreement, and all types of fees tied to the issuance or
77 servicing of the bonds.
- 78 4. A payment or expense associated with a bond insurance

79 policy, financial guaranty, or contract, agreement, or other
 80 credit or liquidity enhancement for bonds or a contract,
 81 agreement, or other financial agreement entered into in
 82 connection with utility cost containment bonds.

83 5. Any coverage charges.

84 6. The funding of one or more reserve accounts related to
 85 utility cost containment bonds.

86
 87 For purposes of this section, the terms "finance" and
 88 "financing" include the ability to refinance.

89 (e) "Financing resolution" means a resolution adopted by
 90 the governing body of an authority that finances or refinances a
 91 utility project with utility cost containment bonds and that
 92 imposes a utility project charge in connection with the utility
 93 cost containment bonds in accordance with subsection (3). A
 94 financing resolution may be separate from a resolution
 95 authorizing the issuance of the bonds.

96 (f) "Local agency" means a member of the authority, or an
 97 agency or subdivision of that member, that is sponsoring or
 98 refinancing a utility project, or any city, county, authority,
 99 special district, public corporation, or other governmental
 100 entity of the state that is sponsoring or refinancing a utility
 101 project.

102 (g) "Public utility services" means water, wastewater,
 103 stormwater, or electric services provided by a publicly owned
 104 utility.

105 (h) "Publicly owned utility" means a utility furnishing
106 water, wastewater, electric, or stormwater services that is
107 owned and operated by a local agency. The term includes any
108 successor to the powers and functions of such local agency.

109 (i) "Revenue" means income and receipts of the authority
110 from any of the following:

- 111 1. A bond purchase agreement.
- 112 2. Bonds acquired by the authority.
- 113 3. Installment sale agreements and other revenue-producing
114 agreements entered into by the authority.
- 115 4. Utility projects financed by the authority.
- 116 5. Grants and other sources of income.
- 117 6. Moneys paid by a local agency.
- 118 7. Interlocal agreements with a local agency.
- 119 8. Interest or other income from any investment of any
120 money in any fund or account established for the payment of
121 principal or interest or premiums on bonds, or any fund or
122 account in which proceeds of utility cost containment bonds are
123 deposited.

124 (j) "Utility cost containment bonds" or "bonds" mean bonds
125 that are issued by an authority, the proceeds of which are used
126 directly or indirectly to pay or reimburse a local agency or its
127 publicly owned utility for the costs of a utility project, and
128 that are secured by a pledge of, and are payable from, utility
129 project property as provided in this section. Utility cost
130 containment bonds may also be used to refinance indebtedness

131 incurred by a local agency to finance or refinance utility
132 projects or to refinance utility cost containment bonds. The
133 term includes bonds, notes, commercial paper, variable rate
134 securities, and any other evidences of indebtedness.

135 (k) "Utility project" means the acquisition, construction,
136 installation, retrofitting, or rebuilding of, or other addition
137 to or improvement of, any equipment, device, structure, process,
138 facility, technology, rights, or property located in or out of
139 the state that is used in connection with the operations of a
140 publicly owned utility.

141 (l) "Utility project charge" means a charge levied on
142 customers of a publicly owned utility to pay the financing costs
143 of utility cost containment bonds issued pursuant to subsection
144 (3). The term includes any adjustment to the utility project
145 charge pursuant to subsection (3).

146 (m) "Utility project property" means the property right
147 created pursuant to subsection (3), including the right, title,
148 and interest of an authority for any of the following:

149 1. The financing resolution and the utility project
150 charge, including any adjustment to the utility project charge
151 pursuant to subsection (3).

152 2. The financing costs of the utility cost containment
153 bonds and all revenues from, and all collections, claims,
154 payments, moneys, or proceeds for, or arising from, the utility
155 project charge.

156 3. All rights to obtain adjustments to the utility project

157 charge pursuant to subsection (3).

158 (3) POWERS OF AN AUTHORITY.—

159 (a) An authority may finance or refinance utility projects
160 as provided in this section. An authority has all the powers
161 provided in this section and s. 163.01(7)(g).

162 (b) The governing body of an authority that is financing
163 the costs of a utility project shall adopt a financing
164 resolution and impose a utility project charge. All provisions
165 of a financing resolution adopted pursuant to this section shall
166 be binding on the authority. The financing resolution shall
167 include all of the following:

168 1. A requirement that a separate utility project charge be
169 stated on the bill of each customer of the publicly owned
170 utility in the class or classes of customers specified in the
171 financing resolution.

172 2. A description of the financial calculation method that
173 the authority shall use to determine the utility project charge.
174 The financial calculation method must include a periodic
175 adjustment formula to be applied at least annually to the most
176 recent utility project charge to correct for any overcollection
177 or undercollection of financing costs from the utility project
178 charge or to make any other adjustments to ensure timely payment
179 of the financing costs of the utility cost containment bonds,
180 including payment of any debt service coverage requirements. The
181 periodic adjustment formula may not be changed and may not be
182 applied less frequently than that required by the financing

183 resolution and the documents relating to the utility cost
184 containment bonds. The authority's decisions regarding the
185 financial calculation method, the periodic adjustment formula,
186 and the allocation of utility project charges among customers of
187 the publicly owned utility shall be final and conclusive.

188 3. A requirement that the authority enter into a servicing
189 agreement with the local agency or its publicly owned utility to
190 collect the utility project charge. The local agency or its
191 publicly owned utility shall act as a servicing agent for
192 collecting the utility project charge as long as the servicing
193 agreement remains in effect. The local agency or its publicly
194 owned utility shall hold the money collected in trust for the
195 exclusive benefit of the persons entitled to the financing costs
196 to be paid from the utility project charge, and the moneys shall
197 not lose their character as revenues of the authority by virtue
198 of possession by the local agency or its publicly owned utility.

199 4. A requirement that each customer in the class of
200 customers specified in the financing resolution who receives
201 water, wastewater, electric, or stormwater services through the
202 publicly owned utility to pay the utility project charge
203 regardless of whether the customer has an agreement to receive
204 water, wastewater, electric, or stormwater services from a
205 person other than the publicly owned utility. The utility
206 project charge shall be a nonbypassable charge to all customers
207 of the publicly owned utility in the class of customers
208 specified in the financing resolution at the time of adoption of

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209 the financing resolution and all future customers in that class
210 or classes. If a customer of the publicly owned utility that is
211 subject to a utility project charge enters into an agreement to
212 purchase water, wastewater, electric, or stormwater services
213 from an entity other than the publicly owned utility, the
214 customer shall remain liable for payment of its share of the
215 utility project charge as if it had not entered into the
216 agreement. The customer's liability may be discharged if the
217 customer continues to pay its share of the utility project
218 charge as it accrues or by a one-time payment, as determined by
219 the authority.

220 (c) The authority shall determine whether adjustments to
221 the utility project charge are required at least annually and at
222 additional intervals as set forth in the financing resolution.
223 Each adjustment shall be made using the financial calculation
224 methodology set forth in the financing resolution expeditiously
225 after the authority's determination that the adjustment is
226 required. The authority shall impose a sufficient utility
227 project charge based on estimates of water, wastewater,
228 electric, or stormwater service usage to ensure timely payment
229 of all financing costs with respect to the utility cost
230 containment bonds. The adjustments shall not impose the utility
231 project charge upon classes of customers that were not subject
232 to the utility project charge pursuant to the financing
233 resolution imposing the original utility project charge.

234 (d) The authority shall pledge the utility project

235 property as security for the payment of the utility cost
236 containment bonds. All rights of an authority with respect to
237 utility project property pledged as security for the payment of
238 utility cost containment bonds shall be for the benefit of, and
239 enforceable by, the beneficiaries of the pledge to the extent
240 provided in the financing documents relating to the utility cost
241 containment bonds.

242 (e) In addition to financing utility projects, the
243 authority may refinance debt of a local agency previously issued
244 to finance or refinance utility projects if such refinancing
245 results in present value savings to the local agency. The
246 authority may also issue utility cost containment bonds to
247 refinance previously issued utility cost containment bonds, if
248 the authority has received the approval of the local agency's
249 governing body.

250 (f) In the financing resolution, the authority may require
251 that in the event of default by the local agency or its publicly
252 owned utility, the authority must order the sequestration and
253 payment to the beneficiaries of the revenues arising from the
254 utility project property if the beneficiaries of the statutory
255 lien as provided in subsection (8) apply for payment of those
256 revenues. This paragraph does not limit any other remedies
257 available to the beneficiaries by reason of the default.

258 (g) The authority may form a single-purpose limited
259 liability company to finance the utility project and may
260 authorize the company to adopt the financing resolution. In such

261 case, the utility cost containment bonds shall be payable from,
262 and secured by, a pledge of amounts paid by the company to the
263 authority from the applicable utility project property. This
264 section is the exclusive method of perfecting a pledge of
265 utility project property by the company securing the payment of
266 financing costs under any agreement of the company in connection
267 with the issuance of utility cost containment bonds. Reference
268 to an authority in this section shall include the company to the
269 extent necessary to implement this section.

270 (h) An authority may elect to finance or refinance a
271 utility project by creating a new single-purpose entity by
272 interlocal agreement. The membership of the new entity shall
273 consist of the authority and two or more of its members or other
274 public agencies. Such entity shall be created solely to perform
275 the duties and responsibilities of an authority under this
276 section and shall constitute an authority for all purposes of
277 this section.

278 (4) LOCAL AGENCY AUTHORITY.—

279 (a) A local agency that owns and operates a publicly owned
280 utility may apply to an authority to finance the costs of a
281 utility project using the proceeds of utility cost containment
282 bonds. In its application to the authority, the local agency
283 shall specify the utility project to be financed by the utility
284 cost containment bonds, the maximum principal amount, the
285 maximum interest rate, and the maximum stated terms of the
286 utility cost containment bonds.

287 (b) A local agency may not apply to an authority for the
288 financing of a utility project pursuant to this section unless
289 the governing body has determined all of the following:

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

291 2. The local agency shall finance the costs of the utility
292 project and the financing costs associated with the financing
293 shall be paid from utility project property, including the
294 utility project charge for the utility cost containment bonds.

295 3. Based on the best information available, the rates of
296 the publicly owned utility plus the utility project charge on
297 the local agency's retail customers resulting from the financing
298 of the utility project with utility cost containment bonds are
299 expected to be lower than the rates of the publicly owned
300 utility on the local agency's retail customers if the utility
301 project was financed with bonds payable from revenues of the
302 publicly owned utility.

303 (c) A determination by the local agency's governing body
304 that a project that will be financed with utility cost
305 containment bonds is a utility project shall be final and
306 conclusive and the utility cost containment bonds issued to
307 finance the utility project and the utility project charge shall
308 be valid and enforceable as set forth in the financing
309 resolution and the documents relating to the utility cost
310 containment bonds.

311 (d) The local agency or its publicly owned utility shall
312 provide the authority with information concerning the publicly

313 owned utility required by the authority in establishing or
314 adjusting the utility project charge.

315 (e) If a local agency with outstanding utility cost
316 containment bonds ceases to operate a water, wastewater,
317 electric, or stormwater utility, either directly or through its
318 publicly owned utility, references in this section to the local
319 agency or to its publicly owned utility shall be to the
320 successor entity. The successor entity shall assume and perform
321 all obligations of the local agency and its publicly owned
322 utility required by this section and shall assume the servicing
323 agreement while the utility cost containment bonds remain
324 outstanding.

325 (5) UTILITY PROJECT CHARGES.—

326 (a) A utility project charge shall constitute utility
327 project property when a financing resolution authorizing the
328 utility project charge becomes effective. The utility project
329 property shall continuously exist as property for all purposes
330 with all of the rights and privileges under this section for the
331 period provided in the financing resolution, but at least until
332 all financing costs with respect to the related utility cost
333 containment bonds are paid in full.

334 (b) The timely and complete payment of all utility project
335 charges by a person liable for the charges shall be a condition
336 of receiving water, wastewater, electric, or stormwater services
337 from the publicly owned utility. The local agency or its
338 publicly owned utility may use its established collection

339 policies and remedies provided by law to enforce collection of
340 the utility project charge. A person liable for a utility
341 project charge may not withhold payment, in whole or in part, of
342 the utility project charge.

343 (c) The pledge of a utility project charge to secure
344 payment of utility cost containment bonds shall be irrevocable,
345 and the state or any other entity may not reduce, impair, or
346 otherwise adjust the utility project charge, except that the
347 authority shall implement the periodic adjustments to the
348 utility project charge as described in subsection (3).

349 (d) Revenue from a utility project charge is deemed
350 special revenue of the authority and does not constitute revenue
351 of the local agency or its publicly owned utility for any
352 purpose, including any dedication, commitment, or pledge of
353 revenue, receipts, or other income that the local agency or its
354 publicly owned utility has made or shall make for the security
355 of any of its obligations.

356 (e) All revenues with respect to utility project property
357 related to utility cost containment bonds, including payments of
358 the utility project charge, shall be applied first to the
359 payment of the financing costs of the utility cost containment
360 bonds then due, including the funding of reserves for the
361 utility cost containment bonds. Any excess revenues shall be
362 applied as determined by the authority for the benefit of the
363 utility for which the utility cost containment bonds were
364 issued.

365 (6) UTILITY COST CONTAINMENT BONDS.—
 366 (a) Utility cost containment bonds shall be within the
 367 parameters of the financing set forth by the local agency
 368 pursuant to this section, and the proceeds of the utility cost
 369 containment bonds made available to the local agency or its
 370 publicly owned utility shall be used for the utility project
 371 identified in the application for financing of the utility
 372 project or used to refinance indebtedness of the local agency
 373 that financed or refinanced the utility project.
 374 (b) Utility cost containment bonds shall be nonrecourse to
 375 the credit or any assets of the local agency or the publicly
 376 owned utility but shall be payable from, and secured by a pledge
 377 of, the utility project property relating to the utility cost
 378 containment bonds and any additional security or credit
 379 enhancement specified in the documents relating to the utility
 380 cost containment bonds.
 381 (c) If utility project property is pledged as security for
 382 the payment of utility cost containment bonds, the local agency
 383 or its publicly owned utility shall enter into a contract with
 384 the authority. The contract shall require that the local agency
 385 or publicly owned utility:
 386 1. Continue to operate the publicly owned utility,
 387 including the utility project that is being financed or
 388 refinanced.
 389 2. Collect the utility project charge from customers for
 390 the benefit and account of the authority and the beneficiaries

391 of the pledge of the utility project charge.

392 3. Separately account for and remit revenue from the
 393 utility project charge to, or for the account of, the authority.

394 (d) The utility cost containment bond documents may not
 395 contain provisions that obligate the state or any political
 396 subdivision thereof to levy or pledge any form of taxation to
 397 pay the utility cost containment bonds or to make any
 398 appropriation for payment of the utility cost containment bonds.

399 (e) Subject to the provisions of this section, utility
 400 cost containment bonds shall be issued pursuant to s.
 401 163.01(7)(g)8.

402 (f) Utility cost containment bonds issued pursuant to this
 403 section may be validated pursuant to s. 163.01(7)(g)9.

404 (g) Notwithstanding any other provision of law, any
 405 provision of this section, a financing resolution or any other
 406 resolution of the authority, or documents relating to utility
 407 cost containment bonds, the authority may not rescind, alter, or
 408 amend any resolution or document that pledges utility cost
 409 charges for the payment of utility cost containment bonds.

410 (7) FINANCING COSTS.—

411 (a) Financing costs in connection with utility cost
 412 containment bonds are a special obligation of the authority and
 413 do not constitute a liability of the state or any political
 414 subdivision thereof. Financing costs are not a pledge of the
 415 full faith and credit of the state or any political subdivision
 416 thereof, including the authority, but are payable solely from

417 the funds in the documents relating to the utility cost
418 containment bonds. This section does not in any way preclude
419 guarantees or credit enhancements in connection with utility
420 cost containment bonds. The following statement or a similar
421 statement shall be printed on the face of all utility cost
422 containment bonds: "Neither the full faith and credit nor the
423 taxing power of the State of Florida or any political
424 subdivision thereof is pledged to pay the principal of, or
425 interest on, this utility cost containment bond."

426 (b) Except as otherwise provided in this section with
427 respect to adjustments to a utility project charge, the recovery
428 of the financing costs for the utility cost containment bonds
429 from the utility project charge are irrevocable. The amount of
430 revenue arising with respect to the financing costs for the
431 utility cost containment bonds or the utility project charge may
432 not be reduced, impaired, postponed, or terminated for any
433 reason until all financing costs to be paid from the utility
434 project charge are fully met and discharged. In addition, the
435 authority shall not, either directly or indirectly:

436 1. Rescind, alter, or amend the applicable financing
437 resolution to revalue or revise for ratemaking purposes the
438 financing costs of utility cost containment bonds;

439 2. Determine that the financing costs for the related
440 utility cost containment bonds or the utility project charge are
441 unjust or unreasonable; or

442 3. In any way reduce or impair the value of utility

443 project property that includes the utility project charge.

444 (c) Except as provided in subsection (3) with respect to
445 periodic adjustments to a utility project charge, the state
446 pledges that it shall not limit or alter the financing costs or
447 the utility project property, including the utility project
448 charge associated with the utility cost containment bonds, or
449 any rights in, to, or under, the utility project property until
450 all financing costs associated with the utility cost containment
451 bonds are fully met and discharged. This section does not
452 preclude limitation or alteration if and when adequate provision
453 is made by law to protect the owners of utility cost containment
454 bonds. The authority may include the state's pledge in the
455 governing documents for utility cost containment bonds.

456 (8) UTILITY PROJECT PROPERTY.—

457 (a) Utility project property shall constitute property for
458 all purposes, including contracts that secure utility cost
459 containment bonds, whether or not the revenues and proceeds
460 arising with respect to the utility project property have
461 accrued.

462 (b) Utility project property constitutes a current
463 property right.

464 (c) All rights of an authority with respect to utility
465 project property pledged as security for the payment of utility
466 cost containment bonds shall be for the benefit of, and
467 enforceable by, the beneficiaries of the pledge to the extent
468 provided in the financing documents relating to the utility cost

469 containment bonds.

470 (d) Subject to the terms of the pledge document created
471 under this section, the validity and relative priority of a
472 pledge is not defeated or adversely affected by the commingling
473 of revenues arising with respect to the utility project property
474 with other funds of the local agency or the publicly owned
475 utility collecting a utility project charge on behalf of an
476 authority.

477 (e)1. Upon the effective date of the financing resolution,
478 the utility project property shall be subject to a first
479 priority statutory lien to secure the payment of the utility
480 cost containment bonds. This lien shall secure the payment of
481 all financing costs, then existing or subsequently arising, to
482 the holders of the utility cost containment bonds, the trustee
483 or representative for the holders of the utility cost
484 containment bonds, and any other entity specified in the
485 financing resolution or the documents relating to the utility
486 cost containment bonds. This lien shall attach to the utility
487 project property regardless of the current ownership of the
488 utility project property, including any local agency or publicly
489 owned utility, the authority, or any other person. This lien
490 shall be valid and enforceable against the owner of the utility
491 project property and all third parties upon the effectiveness of
492 the financing resolution without any further public notice.

493 2. The statutory lien on the utility project property is a
494 continuously perfected lien on all revenues and proceeds

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495 generated from the utility project property, whether or not the
496 revenues or proceeds have accrued. Utility project property
497 shall constitute property for all purposes, including for
498 contracts securing utility cost containment bonds, whether or
499 not the revenues or proceeds have accrued.

500 (9) BANKRUPTCY PROCEEDINGS PROHIBITED.—Notwithstanding any
501 other provision of law, an authority that issues utility cost
502 containment bonds may not, and a governmental officer or an
503 organization shall not authorize the authority to, become a
504 debtor under the United States Bankruptcy Code, 11 U.S.C. ss. 1
505 et seq., or to become the subject of any similar case or
506 proceeding under any other state or federal law, as long as any
507 payment obligation from utility project property remains with
508 respect to the utility cost containment bonds.

509 (10) CONSTRUCTION.—This section shall be liberally
510 construed in order to effectively carry out the intent and
511 purposes of this section.

512 Section 2. This act shall take effect July 1, 2014.