

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Energy & Utilities
 2 Subcommittee

3 Representative Santiago offered the following:

4

5 **Amendment (with title amendment)**

6 Between lines 55 and 56, insert:

7 Section 1. Utility Cost Containment Bond Act.-

8 (1) SHORT TITLE.-This section may be cited as the "Utility
 9 Cost Containment Bond Act."

10 (2) DEFINITIONS.-As used in this section, the term:

11 (a) "Authority" means an entity created pursuant to s.
 12 163.01(7)(g) which provides public utility services and whose
 13 membership consists of at least three counties. The term
 14 includes any successor to the powers and functions of such an
 15 entity.

16 (b) "Cost", as applied to a utility project, or a portion
 17 of a utility project financed under this act, means:

18 1. Any part of the expense of constructing, renovating or

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19 acquiring lands, structures, real or personal property, rights,
20 rights-of-way, franchises, easements and interests acquired or
21 used for a utility project.

22 2. The expense of demolishing or removing any buildings or
23 structures on acquired land, including the expense of acquiring
24 any lands to which the buildings or structures may be moved, and
25 the cost of all machinery and equipment used for the demolition
26 or removal.

27 3. Finance charges.

28 4. Interest as determined by the authority.

29 5. Provisions for working capital and debt service
30 reserves.

31 6. Expenses for extensions, enlargements, additions,
32 replacements, renovations, and improvements.

33 7. Expenses for architectural, engineering, financial,
34 accounting and legal services, plans, specifications, estimates,
35 and administration.

36 8. Any other expense necessary or incidental to determining
37 the feasibility of constructing any utility project or
38 incidental to the construction, acquisitions, or financing of
39 any utility project.

40 (c) "Customer" means a person receiving water, wastewater,
41 or stormwater service from a publicly owned utility.

42 (d) "Financing costs" means any of the following:

43 1. Interest and redemption premiums that are payable on
44 utility cost containment bonds.

45 2. The cost of retiring the principal of utility cost
46 containment bonds, whether at maturity, including acceleration

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47 of maturity upon an event of default, or upon redemption,
48 including sinking fund redemption.

49 3. The cost related to issuing or servicing utility cost
50 containment bonds, including any payment under an interest rate
51 swap agreement and any type of fee.

52 4. A payment or expense associated with a bond insurance
53 policy; financial guaranty; a contract, agreement, or other
54 credit or liquidity enhancement for bonds; or a contract,
55 agreement, or other financial agreement entered into in
56 connection with utility cost containment bonds.

57 5. Any coverage charges.

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

60 (e) "Finance" or "financing" includes refinancing.

61 (f) "Financing resolution" means a resolution adopted by
62 the governing body of an authority that provides for the
63 financing or refinancing of a utility project with utility cost
64 containment bonds and that imposes a utility project charge in
65 connection with the utility cost containment bonds in accordance
66 with subsection (4). A financing resolution may be separate from
67 a resolution authorizing the issuance of the bonds.

68 (g) "Governing body" means the body that governs a local
69 agency.

70 (h) "Local agency" means a member of the authority, or an
71 agency or subdivision of that member, which is sponsoring or
72 refinancing a utility project, or, any municipality, county,
73 authority, special district, public corporation, or other
74 governmental entity of the state that is sponsoring or

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75 refinancing a utility project.

76 (i) "Public utility services" means any of the following
77 services provided by a publicly owned utility:

78 1. Water.

79 2. Wastewater.

80 3. Stormwater.

81 (j) "Publicly owned utility" means a utility furnishing
82 water, wastewater, or stormwater service that is owned and
83 operated by a local agency. The term includes any successor to
84 the powers and functions of such a utility.

85 (k) "Revenue" means income and receipts of the authority
86 from any of the following:

87 1. A bond purchase agreement.

88 2. Bonds acquired by the authority.

89 3. Installment sales agreements and other revenue-producing
90 agreements entered into by the authority.

91 4. Utility projects financed or refinanced by the
92 authority.

93 5. Grants and other sources of income.

94 6. Moneys paid by a local agency.

95 7. Interlocal agreements with a local agency.

96 8. Interest or other income from any investment of any
97 money in any fund or account established for the payment of
98 principal, interest, or premiums on bonds or the deposit of
99 proceeds of utility cost containment bonds.

100 (l) "Utility cost containment bonds" means bonds that are
101 issued by an authority, the proceeds of which are used directly
102 or indirectly to pay or reimburse a local agency or its publicly

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103 owned utility for the costs of a utility project, and that are
104 secured by a pledge of, and are payable from, utility project
105 property. The term includes bonds, notes, commercial paper,
106 variable rate securities, and any other evidence of
107 indebtedness. Utility cost containment bonds may also be used to
108 refinance indebtedness incurred by a local agency to finance or
109 refinance utility projects or to refinance utility cost
110 containment bonds.

111 (m) "Utility project" means the acquisition, construction,
112 installation, retrofitting, rebuilding, or other addition to, or
113 improvement of, any equipment, device, structure, process,
114 facility, technology, rights, or property, located in or outside
115 the state, that is used in connection with the operations of a
116 publicly owned utility.

117 (n) "Utility project property" means the property right
118 created pursuant to subsection (6) including the right, title,
119 and interest of an authority in any of the following:

120 1. The financing resolution, the utility project charge,
121 and any adjustment established in accordance with subsection (5)

122 2. The financing costs of the utility cost containment
123 bonds and all revenues, and all collections, claims, payments,
124 moneys, or proceeds for, or arising from, the utility project
125 charge.

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

128 (3) UTILITY PROJECTS.—

129 (a) A local agency that owns and operates a publicly owned
130 utility may apply to an authority to finance the costs of a

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131 utility project using the proceeds of utility cost containment
132 bonds. In its application to the authority, the local agency
133 shall specify the utility project to be financed by the utility
134 cost containment bonds, the maximum principal amount, the
135 maximum interest rate, and the maximum stated terms of the
136 utility cost containment bonds.

137 (b) A local agency may not apply to an authority for the
138 financing of a utility project under this section unless the
139 governing body has determined all of the following:

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

141 2. The local agency will finance costs of the utility
142 project and the financing costs associated with the financing
143 will be paid from utility project property, including the
144 utility project charge for the utility cost containment bonds as
145 defined in this part.

146 3. Based on the best information available to the governing
147 body, the rates of the publicly owned utility plus the utility
148 project charge resulting from the financing of the utility
149 project with utility cost containment bonds are expected to be
150 lower on the local agency's retail customers than the rates of
151 the publicly owned utility if the utility project was financed
152 with bonds payable from revenues of the publicly owned utility.

153 (c) A determination by the local agency's governing body
154 that a project to be financed with utility cost containment
155 bonds is a utility project shall be final and conclusive and the
156 utility cost containment bonds issued to finance the utility
157 project and the utility project charge shall be valid and
158 enforceable as set forth in the financing resolution and the

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159 documents relating to the utility cost containment bonds.

160 (d) If a local agency with outstanding utility cost
161 containment bonds ceases to operate a water, wastewater, or
162 stormwater utility, either directly or through its publicly
163 owned utility, references in this section to the local agency or
164 to its publicly owned utility shall be to the successor entity.
165 The successor entity shall assume and perform all obligations of
166 the local agency and its publicly owned utility required by this
167 section and shall assume the servicing agreement required under
168 subsection (4) while the utility cost containment bonds remain
169 outstanding.

170 (4) FINANCING UTILITY PROJECTS.—

171 (a) An authority may finance or refinance utility projects;
172 refinance debt of a local agency previously issued to finance or
173 refinance utility projects, provided such refinancing results in
174 present value savings to the local agency; and issue utility
175 cost containment bonds to refinance previously issued utility
176 cost containment bonds, provided it has received the approval of
177 the local agency.

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

179 a. Form a single purpose limited liability company and
180 authorize the company to adopt the financing resolution of such
181 utility project; or

182 b. Create a new single-purpose entity by interlocal
183 agreement whose membership shall consist of the authority and
184 two or more of its members or other public agencies.

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

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187 purpose of performing the duties and responsibilities of the
188 authority under this section and shall constitute an authority
189 for all purposes of this section. Reference to the authority in
190 this section includes the company or entity as necessary to
191 implement this act.

192 (b) The governing body of an authority that is financing
193 the costs of a utility project shall adopt a financing
194 resolution and shall impose a utility project charge as
195 described in subsection (5). All provisions of a financing
196 resolution adopted pursuant to this section are binding on the
197 authority.

198 1. The financing resolution must:

199 a. Provide a brief description of the financial calculation
200 method the authority will use to determine the utility project
201 charge. The calculation method shall include a periodic
202 adjustment methodology to be applied at least annually to the
203 utility project charge. The authority shall establish the
204 allocation of utility project charges among customers of the
205 publicly owned utility. Its decision shall be final and
206 conclusive and the financial calculation method for determining
207 the utility project charge and the periodic adjustment
208 methodology may not be changed.

209 b. Require each customer, in the class or classes of
210 customers specified in the financing resolution, who receives
211 water, wastewater, or stormwater service through the publicly
212 owned utility, to pay the utility project charge regardless of
213 whether the customer has an agreement to receive water,
214 wastewater, or stormwater service from a person other than the

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215 publicly owned utility.

216 c. Require a separate charge to the bill of each customer
217 of the publicly owned utility in the class or classes of
218 customers specified in the financing resolution for the utility
219 project charge.

220 d. Require that the authority enter into a servicing
221 agreement with the local agency or its publicly owned utility to
222 collect the utility project charge.

223 2. The authority may require in the financing resolution
224 that in the event of a default by the local agency or its
225 publicly owned utility, with respect to revenues from the
226 utility project property, the authority, upon the application by
227 the beneficiaries of the statutory lien as set forth in
228 subsection (6), shall order the sequestration and payment to the
229 beneficiaries of revenues arising from utility project property.
230 This provision does not limit any other remedies available to
231 the beneficiaries by reason of default.

232 (c) An authority has all the powers provided in this
233 section in addition to the powers provided under s.
234 163.01(7)(g).

235 (5) UTILITY PROJECT CHARGE.-

236 (a) The authority shall impose a sufficient utility project
237 charge based on estimates of water, wastewater, or stormwater
238 service usage, to ensure timely payment of all financing costs
239 with respect to the utility cost containment bonds. The local
240 agency or its publicly owned utility shall provide the authority
241 with information concerning the publicly owned utility that may
242 be required by the authority in establishing the utility project

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243 charge.

244 (b) The utility project charge is a nonbypassable charge to
245 all customers of the publicly owned utility in the class or
246 classes of customers specified in the financing resolution at
247 the time of adoption of the financing resolution as well as all
248 future customers in that class or classes. If a customer of the
249 publicly owned utility that is subject to a utility project
250 charge enters into an agreement to purchase water, wastewater,
251 or stormwater service from an entity other than the publicly
252 owned utility, the customer shall remain liable for the payment
253 of the customer's share of the utility project charge as if the
254 customer had not entered into the agreement. The customer may
255 discharge the liability by continuing to pay the customer's
256 share of the utility project charge as it accrues or by making a
257 one-time payment, as determined by the authority.

258 (c) The authority shall determine whether adjustments to
259 the utility project charge are required at least annually, and
260 at such additional intervals as set forth in the financing
261 resolution and the documents relating to the applicable utility
262 cost containment bonds. The authority shall use the adjustment
263 to correct for any overcollection or undercollection of
264 financing costs from the utility project charge or to make any
265 other adjustment necessary to ensure the timely payment of the
266 financing costs of the utility cost containment bonds, including
267 adjustment of the utility project charge to pay any debt service
268 coverage requirement for the utility cost containment bonds. The
269 local agency or its publicly owned utility shall provide the
270 authority with information concerning the publicly owned utility

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271 that may be required by the authority in adjusting the utility
272 project charge.

273 1. If the authority determines that an adjustment to the
274 utility project charge is required, an adjustment shall be made
275 using the financial calculation methodology set forth in the
276 financing resolution.

277 2. The adjustment may not impose the utility project charge
278 upon classes of customers which were not subject to the utility
279 project charge pursuant to the financing resolution imposing the
280 utility project charge.

281 (d) Revenues from a utility project charge shall be deemed
282 special revenue of the authority and do not constitute revenue
283 of the local agency or its publicly owned utility for any
284 purpose, including, but not limited to, any dedication,
285 commitment, or pledge of revenue, receipts, or other income that
286 the local agency or its publicly owned utility has made or will
287 make for the security of any of its obligations.

288 (e) The local agency or its publicly owned utility shall
289 act as a servicing agent for collecting the utility project
290 charge as long as the servicing agreement remains in effect. The
291 local agency or its publicly owned utility, shall hold the money
292 collected in trust for the exclusive benefit of the persons
293 entitled to the financing costs to be paid from the utility
294 project charge and the moneys shall not lose their character as
295 revenues of the authority by virtue of possession by the local
296 agency or its publicly owned utility.

297 (f) The timely and complete payment of all utility project
298 charges by a person liable for the charges shall be a condition

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299 of receiving water, wastewater, or stormwater service from the
300 publicly owned utility. The local agency or its publicly owned
301 utility may use its established collection policies and remedies
302 provided by law to enforce collection of the utility project
303 charge. A person liable for a utility project charge may not
304 withhold payment, in whole or in part, thereof.

305 (g) The pledge of a utility project charge to secure
306 payment of utility cost containment bonds shall be irrevocable,
307 and the state, or any other entity, may not reduce, impair, or
308 otherwise adjust the utility project charge, except that the
309 authority shall implement the periodic adjustments to the
310 utility project charge as provided under this subsection.

311 (6) UTILITY PROJECT PROPERTY.—

312 (a) A utility project charge shall constitute utility
313 project property when a financing resolution authorizing the
314 utility project charge has become effective. The utility project
315 property shall continuously exist as property for all purposes
316 with all of the rights and privileges of this section for the
317 period provided in the financing resolution, but at least until
318 all financing costs with respect to the related utility cost
319 containment bonds are paid in full.

320 (b) Utility project property shall constitute property,
321 including for contracts securing utility cost containment bonds,
322 whether or not the revenues and proceeds arising with respect to
323 the utility project property have accrued.

324 (c) Utility project property shall constitute a current
325 property right.

326 (d) Upon the effective date of the financing resolution,

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327 the utility project property is subject to a first priority
328 statutory lien to secure the payment of the utility cost
329 containment bonds.

330 1. The lien secures the payment of all financing costs,
331 then existing or subsequently arising, to the holders of the
332 utility cost containment bonds, the trustee or representative
333 for the holders of the utility cost containment bonds, and any
334 other entity specified in the financing resolution or the
335 documents relating to the utility cost containment bonds.

336 2. The lien attaches to the utility project property
337 regardless of the current ownership of the utility project
338 property, including any local agency or its publicly owned
339 utility, the authority, or other person.

340 3. The lien is valid and enforceable against the owner of
341 the utility project property and all third parties upon the
342 effectiveness of the financing resolution without any further
343 public notice.

344 4. The lien is a continuously perfected lien on all
345 revenues and proceeds generated from the utility project
346 property, whether or not the revenues or proceeds have accrued.
347 Utility project property shall constitute property for all
348 purposes, including for contracts securing utility cost
349 containment bonds, whether or not the revenues or proceeds
350 arising with respect thereto have accrued.

351 (e) All revenues with respect to utility project property
352 related to utility cost containment bonds, including payments of
353 the utility project charge, shall be applied first to the
354 payment of the financing costs of the utility cost containment

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355 bonds then due, including the funding of reserves for the
356 utility cost containment bonds. Any excess revenues shall be
357 applied as determined by the authority for the benefit of the
358 utility for which the utility cost containment bonds were
359 issued.

360 (7) UTILITY COST CONTAINMENT BONDS.-

361 (a) Utility cost containment bonds shall be within the
362 parameters of the financing set forth by the local agency
363 pursuant to this part in connection with the utility cost
364 containment bonds and the proceeds of the utility cost
365 containment bonds made available to the local agency or its
366 publicly owned utility shall be utilized for the utility project
367 identified in the application for financing of the utility
368 project or utilized to refinance indebtedness of the local
369 agency which financed or refinanced utility projects.

370 (b) Subject to the provisions of this part, utility cost
371 containment bonds shall be issued in accordance with the
372 provisions of s. 163.01(7)(g)8. and may be validated pursuant to
373 s. 163.01(7)(g)9.

374 (c) The authority shall pledge the utility project property
375 as security for the payment of the utility cost containment
376 bonds. All rights of an authority with respect to utility
377 project property pledged as security for the payment of utility
378 cost containment bonds shall be for the benefit of, and
379 enforceable by, the beneficiaries of the pledge to the extent
380 provided in the financing documents relating to the utility cost
381 containment bonds.

382 (d) Utility cost containment bonds shall be nonrecourse to

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383 the credit or any assets of the local agency or the publicly
384 owned utility but shall be payable from, and secured by a pledge
385 of, the utility project property relating to the utility cost
386 containment bonds and any additional security or credit
387 enhancement specified in the documents relating to the utility
388 cost containment bonds. If the authority is financing the
389 project through a single purpose limited liability company
390 pursuant to subsection (4), the utility cost containment bonds
391 shall be payable from, and secured by, a pledge of amounts paid
392 by the company to the authority from the applicable utility
393 project property. This provision shall be the exclusive method
394 of perfecting a pledge of utility project property by the
395 company securing the payment of financing costs under any
396 agreement of the company in connection with the issuance of
397 utility cost containment bonds.

398 (e) If utility project property is pledged as security for
399 the payment of utility cost containment bonds, the local agency
400 or its publicly owned utility must enter into a contract with
401 the authority which shall require, at a minimum, that the
402 publicly owned utility:

403 1. Continue to operate its publicly owned utility,
404 including the utility project that is being financed or
405 refinanced.

406 2. Collect the utility project charge from customers for
407 the benefit and account of the authority and the beneficiaries
408 of the pledge of the utility project charge.

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

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411 (f) The issuance of utility cost containment bonds shall
412 not obligate the state or any political subdivision thereof to
413 levy or to pledge any form of taxation to pay the utility cost
414 containment bonds or to make any appropriation for their
415 payment. All utility cost containment bonds shall contain on
416 their face a statement in substantially the following form:

417
418 "Neither the full faith and credit nor the taxing power of the
419 State of Florida or any political subdivision thereof is pledged
420 to the payment of the principal of, or interest on, this bond."

421
422 (g) Notwithstanding any other law, any provision of this
423 section, a financing resolution, any other resolution of the
424 authority, or the provisions of the documents relating to
425 utility cost containment bonds, the authority does not have the
426 power or right to rescind, alter, or amend any resolution or
427 document that pledges utility cost charges for payment of
428 utility cost containment bonds.

429 (h) The pledge of a utility project charge to secure
430 payment of utility cost containment bonds shall be irrevocable,
431 and the state, or any other entity, may not reduce, impair, or
432 otherwise adjust the utility project charge, except that the
433 authority shall implement the periodic adjustments to the
434 utility project charge as provided under subsection(5).

435 (i) Subject to the terms of the pledge document created
436 under this part, the validity and relative priority of a pledge
437 is not defeated or adversely affected by the commingling of
438 revenues arising with respect to the utility project property

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

442 (j) Financing costs in connection with utility cost
443 containment bonds are a special obligation of the authority and
444 do not constitute a liability of the state or any political
445 subdivision thereof. Financing costs are not a pledge of the
446 full faith and credit of the state or any political subdivision
447 thereof, including the authority, but are payable solely from
448 the funds in the documents relating to the utility cost
449 containment bonds. This provision does not preclude guarantees
450 or credit enhancements in connection with utility cost
451 containment bonds.

452 (k) Except as otherwise provided in this section with
453 respect to adjustments to a utility project charge, the recovery
454 of the financing costs for the utility cost containment bonds
455 from the utility project charge shall be irrevocable and the
456 authority does not have the power, either by rescinding,
457 altering, or amending the applicable financing resolution, to
458 revalue or revise for ratemaking purposes the financing costs of
459 utility cost containment bonds, determine that the financing
460 costs for the related utility cost containment bonds or the
461 utility project charge is unjust or unreasonable, or in any way
462 reduce or impair the value of utility project property that
463 includes the utility project charge, either directly or
464 indirectly. The amount of revenues arising with respect to the
465 financing costs for the related utility cost containment bonds
466 or the utility project charge are not subject to reduction,

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467 impairment, postponement, or termination for any reason until
468 all financing costs to be paid from the utility project charge
469 are fully met and discharged.

470 (1) Except as provided in subsection (5) with respect to
471 adjustments to a utility project charge, the state does hereby
472 pledge and agree with the owners of utility cost containment
473 bonds that the state shall neither limit nor alter the financing
474 costs or the utility project property, including the utility
475 project charge, relating to the utility cost containment bonds,
476 or any rights in, to or under, the utility project property
477 until all financing costs with respect to the utility cost
478 containment bonds are fully met and discharged. This paragraph
479 does not preclude limitation or alteration if and when adequate
480 provision is made by law for the protection of the owners. The
481 authority is authorized to include this pledge by the state in
482 the governing documents for utility cost containment bonds.

483 (8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other
484 law, an authority that issued utility cost containment bonds may
485 not, and no governmental officer or organization shall authorize
486 the authority, to become a debtor under the United States
487 Bankruptcy Code or to become the subject of any similar case or
488 proceedings under any other state or federal law as long as any
489 payment obligation from utility project property remains with
490 respect to the utility cost containment bonds.

491 (9) CONSTRUCTION.—This section and all grants of power and
492 authority in this section shall be liberally construed to
493 effectuate their purposes. All incidental powers necessary to

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494 carry into effect the provisions of this section are expressly
495 granted to, and conferred upon, public entities

496

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

501

Remove lines 2-3 and insert:

502

An act relating to water supply and management systems; creating

503

the Utility Cost Containment Bond Act; creating s. 159.810,

504

F.S.; requiring the

505