



389346

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/01/2014	.	
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The Committee on Community Affairs (Hukill) recommended the following:

1 **Senate Substitute for Amendment (549218) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Utility Cost Containment Bond Act.-

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

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

10 (a) "Authority" means an entity created pursuant to s.



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11 163.01(7)(g), Florida Statutes, which provides public utility
12 services and whose membership consists of at least three
13 counties. The term includes any successor to the powers and
14 functions of such an entity.

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

18 1. Any part of the expense of constructing, renovating or
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,
35 estimates, 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, acquisition, or financing of any
39 utility project.



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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
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 relating 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



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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
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

82 The term does not include internet or cable services.

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

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

- 89 1. A bond purchase agreement.
- 90 2. Bonds acquired by the authority.
- 91 3. Installment sales agreements and other revenue-producing
92 agreements entered into by the authority.
- 93 4. Utility projects financed or refinanced by the
94 authority.
- 95 5. Grants and other sources of income.
- 96 6. Moneys paid by a local agency.
- 97 7. Interlocal agreements with a local agency.



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

102 (l) "Utility cost containment bonds" means bonds, notes,
103 commercial paper, variable rate securities, and any other
104 evidence of indebtedness issued by an authority, the proceeds of
105 which are used directly or indirectly to pay or reimburse a
106 local agency or its publicly owned utility for the costs of a
107 utility project, and which are secured by a pledge of, and are
108 payable from, utility project property.

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

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

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

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

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



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127 (3) UTILITY PROJECTS.-

128 (a) A local agency that owns and operates a publicly owned
129 utility may apply to an authority to finance the costs of a
130 utility project using the proceeds of utility cost containment
131 bonds. In its application to the authority, the local agency
132 shall specify the utility project to be financed by the utility
133 cost containment bonds and the maximum principal amount, the
134 maximum interest rate, and the maximum stated terms of the
135 utility cost containment bonds.

136 (b) A local agency may not apply to an authority for the
137 financing of a utility project under this section unless the
138 governing body has determined, in a duly noticed public meeting,
139 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.

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

152 (c) A determination by the governing body that a project to
153 be financed with utility cost containment bonds is a utility
154 project is final and conclusive, and the utility cost
155 containment bonds issued to finance the utility project and the



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156 utility project charge shall be valid and enforceable as set
157 forth in the financing resolution and the documents relating to
158 the utility cost containment bonds.

159 (d) The savings resulting from the issuance of utility cost
160 containment bonds for a utility project must be used to directly
161 benefit the customers of the publicly owned utility through rate
162 reductions or other programs.

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

173 (4) FINANCING UTILITY PROJECTS.-

174 (a) An authority may issue utility cost containment bonds
175 to finance or refinance utility projects; refinance debt of a
176 local agency incurred in financing or refinancing utility
177 projects, provided such refinancing results in present value
178 savings to the local agency; or, with the approval of the local
179 agency, refinance previously issued utility cost containment
180 bonds.

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

182 a. Form a single-purpose limited liability company and
183 authorize the company to adopt the financing resolution of such
184 utility project; or



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

188 2. A single-purpose limited liability company or a single-
189 purpose entity may be created by the authority solely for the
190 purpose of performing the duties and responsibilities of the
191 authority specified in this section and shall constitute an
192 authority for all purposes of this section. Reference to the
193 authority includes a company or entity created under this
194 paragraph.

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

201 1. The financing resolution must:

202 a. Provide a brief description of the financial calculation
203 method the authority will use in determining the utility project
204 charge. The calculation method shall include a periodic
205 adjustment methodology to be applied at least annually to the
206 utility project charge. The authority shall establish the
207 allocation of the utility project charge among classes of
208 customers of the publicly owned utility. The decision of the
209 authority shall be final and conclusive, and the method of
210 calculating the utility project charge and the periodic
211 adjustment may not be changed;

212 b. Require each customer in the class or classes of
213 customers specified in the financing resolution who receives



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214 water, wastewater, or stormwater service through the publicly
215 owned utility to pay the utility project charge regardless of
216 whether the customer has an agreement to receive water,
217 wastewater, or stormwater service from a person other than the
218 publicly owned utility;

219 c. Require that the utility project charge be charged
220 separately from other charges on the bill of customers of the
221 publicly owned utility in the class or classes of customers
222 specified in the financing resolution; and

223 d. Require that the authority enter into a servicing
224 agreement with the local agency or its publicly owned utility to
225 collect the utility project charge.

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

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

237 (5) UTILITY PROJECT CHARGE.-

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



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243 information concerning the publicly owned utility which may be
244 required by the authority in establishing the utility project
245 charge.

246 (b) The utility project charge is a nonbypassable charge to
247 all present and future customers of the publicly owned utility
248 in the class or classes of customers specified in the financing
249 resolution upon its adoption. If a customer of the publicly
250 owned utility that is subject to a utility project charge enters
251 into an agreement to purchase water, wastewater, or stormwater
252 service from a supplier other than the publicly owned utility,
253 the customer shall remain liable for the payment of the utility
254 project charge if the customer has received any service or
255 benefit from the publicly owned utility subsequent to the date
256 the utility project charged is imposed.

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



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272 1. If the authority determines that an adjustment to the
273 utility project charge is required, the adjustment shall be made
274 using the methodology specified in the financing resolution.

275 2. The adjustment may not impose the utility project charge
276 on a class of customers that was not subject to the utility
277 project charge pursuant to the financing resolution imposing the
278 utility project charge.

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

286 (e) The local agency or its publicly owned utility shall
287 act as a servicing agent for collecting the utility project
288 charge throughout the duration of the servicing agreement
289 required by the financing resolution. The local agency or its
290 publicly owned utility shall hold the money collected in trust
291 for the exclusive benefit of the persons entitled to have the
292 financing costs paid from the utility project charge and the
293 money does not lose its character as revenues of the authority
294 by virtue of possession by the local agency or its publicly
295 owned utility.

296 (f) The timely and complete payment of all utility project
297 charges by the customer shall be a condition of receiving water,
298 wastewater, or stormwater service from the publicly owned
299 utility. The local agency or its publicly owned utility may use
300 its established collection policies and remedies provided under



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301 law to enforce collection of the utility project charge. A
302 customer liable for a utility project charge may not withhold
303 payment, in whole or in part, thereof.

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

310 (6) UTILITY PROJECT PROPERTY.—

311 (a) A utility project charge constitutes utility project
312 property on the effective date of the financing resolution
313 authorizing such utility project charge. Utility project
314 property constitutes property, including for contracts securing
315 utility cost containment bonds, regardless of whether the
316 revenues and proceeds arising with respect to the utility
317 project property have accrued. Utility project property shall
318 continuously exist as property for all purposes with all of the
319 rights and privileges of this section for the period provided in
320 the financing resolution or until all financing costs with
321 respect to the related utility cost containment bonds are paid
322 in full, whichever occurs first.

323 (b) Upon the effective date of the financing resolution,
324 the utility project property is subject to a first priority
325 statutory lien to secure the payment of the utility cost
326 containment bonds.

327 1. The lien secures the payment of all financing costs then
328 existing or subsequently arising to the holders of the utility
329 cost containment bonds, the trustee or representative for the



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330 holders of the utility cost containment bonds, and any other
331 entity specified in the financing resolution or the documents
332 relating to the utility cost containment bonds.

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

337 3. Upon the effective date of the financing resolution, the
338 lien is valid and enforceable against the owner of the utility
339 project property and all third parties, and additional public
340 notice is not required.

341 4. The lien is a continuously perfected lien on all
342 revenues and proceeds generated from the utility project
343 property, regardless of whether the revenues or proceeds have
344 accrued.

345 (c) All revenues with respect to utility project property
346 related to utility cost containment bonds, including payments of
347 the utility project charge, shall be applied first to the
348 payment of the financing costs of the utility cost containment
349 bonds then due, including the funding of reserves for the
350 utility cost containment bonds. Any excess revenues shall be
351 applied as determined by the authority for the benefit of the
352 utility for which the utility cost containment bonds were
353 issued.

354 (7) UTILITY COST CONTAINMENT BONDS.—

355 (a) Utility cost containment bonds shall be issued within
356 the parameters of the financing provided by the authority
357 pursuant to this section. The proceeds of the utility cost
358 containment bonds made available to the local agency or its



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359 publicly owned utility shall be used for the utility project
360 identified in the application for financing of the utility
361 project or used to refinance indebtedness of the local agency
362 which financed or refinanced utility projects.

363 (b) Utility cost containment bonds shall be issued in
364 accordance with this section and s. 163.01(7)(g)8., Florida
365 Statutes, and may be validated pursuant to s. 163.01(7)(g)9.,
366 Florida Statutes.

367 (c) The authority shall pledge the utility project property
368 as security for the payment of the utility cost containment
369 bonds. All rights of an authority with respect to utility
370 project property pledged as security for the payment of utility
371 cost containment bonds shall be for the benefit of, and
372 enforceable by, the beneficiaries of the pledge to the extent
373 provided in the financing documents relating to the utility cost
374 containment bonds.

375 1. If utility project property is pledged as security for
376 the payment of utility cost containment bonds, the local agency
377 or its publicly owned utility shall enter into a contract with
378 the authority which requires, at a minimum, that the publicly
379 owned utility:

380 a. Continue to operate its publicly owned utility,
381 including the utility project that is being financed or
382 refinanced;

383 b. Collect the utility project charge from customers for
384 the benefit and account of the authority and the beneficiaries
385 of the pledge of the utility project charge; and

386 c. Separately account for and remit revenue from the
387 utility project charge to, or for the account of, the authority.



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388 2. The pledge of a utility project charge to secure payment
389 of utility cost containment bonds is irrevocable, and the state
390 or any other entity may not reduce, impair, or otherwise adjust
391 the utility project charge, except that the authority shall
392 implement periodic adjustments to the utility project charge as
393 provided under subsection (5).

394 (d) Utility cost containment bonds shall be nonrecourse to
395 the credit or any assets of the local agency or the publicly
396 owned utility but shall be payable from, and secured by a pledge
397 of, the utility project property relating to the utility cost
398 containment bonds and any additional security or credit
399 enhancement specified in the documents relating to the utility
400 cost containment bonds. If, pursuant to subsection (4), the
401 authority is financing the project through a single-purpose
402 limited liability company, the utility cost containment bonds
403 shall be payable from, and secured by, a pledge of amounts paid
404 by the company to the authority from the applicable utility
405 project property. This provision shall be the exclusive method
406 of perfecting a pledge of utility project property by the
407 company securing the payment of financing costs under any
408 agreement of the company in connection with the issuance of
409 utility cost containment bonds.

410 (e) The issuance of utility cost containment bonds does not
411 obligate the state or any political subdivision thereof to levy
412 or to pledge any form of taxation to pay the utility cost
413 containment bonds or to make any appropriation for their
414 payment. All utility cost containment bonds must contain on
415 their face a statement in substantially the following form:
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417 "Neither the full faith and credit nor the taxing power of the
418 State of Florida or any political subdivision thereof is pledged
419 to the payment of the principal of, or interest on, this bond."

420
421 (f) Notwithstanding any other law or this section, a
422 financing resolution or other resolution of the authority, or
423 documents relating to utility cost containment bonds, the
424 authority may not rescind, alter, or amend any resolution or
425 document that pledges utility cost charges for payment of
426 utility cost containment bonds.

427 (g) Subject to the terms of the pledge document created
428 under this part, the validity and relative priority of a pledge
429 is not defeated or adversely affected by the commingling of
430 revenues generated by the utility project property with other
431 funds of the local agency or the publicly owned utility
432 collecting a utility project charge on behalf of an authority.

433 (h) Financing costs in connection with utility cost
434 containment bonds are a special obligation of the authority and
435 do not constitute a liability of the state or any political
436 subdivision thereof. Financing costs are not a pledge of the
437 full faith and credit of the state or any political subdivision
438 thereof, including the authority, but are payable solely from
439 the funds in the documents relating to the utility cost
440 containment bonds. This provision does not preclude guarantees
441 or credit enhancements in connection with utility cost
442 containment bonds.

443 (i) Except as otherwise provided in this section with
444 respect to adjustments to a utility project charge, the recovery
445 of the financing costs for the utility cost containment bonds



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446 from the utility project charge shall be irrevocable and the
447 authority does not have the power, either by rescinding,
448 altering, or amending the applicable financing resolution, to
449 revalue or revise for ratemaking purposes the financing costs of
450 utility cost containment bonds; to determine that the financing
451 costs for the related utility cost containment bonds or the
452 utility project charge is unjust or unreasonable; or to in any
453 way reduce or impair the value of utility project property that
454 includes the utility project charge, either directly or
455 indirectly. The amount of revenues arising with respect to the
456 financing costs for the related utility cost containment bonds
457 or the utility project charge are not subject to reduction,
458 impairment, postponement, or termination for any reason until
459 all financing costs to be paid from the utility project charge
460 are fully met and discharged.

461 (j) Except as provided in subsection (5) with respect to
462 adjustments to a utility project charge, the state does hereby
463 pledge and agree with the owners of utility cost containment
464 bonds that the state shall neither limit nor alter the financing
465 costs or the utility project property, including the utility
466 project charge, relating to the utility cost containment bonds,
467 or any rights in, to, or under the utility project property
468 until all financing costs with respect to the utility cost
469 containment bonds are fully met and discharged. This paragraph
470 does not preclude limitation or alteration if adequate provision
471 is made by law for the protection of the owners. The authority
472 may include this pledge by the state in the governing documents
473 for utility cost containment bonds.

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



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475 law, an authority that issued utility cost containment bonds may
476 not, and no governmental officer or organization shall so
477 authorize the authority to, become a debtor under the United
478 States Bankruptcy Code or become the subject of any similar case
479 or proceeding under any other state or federal law if any
480 payment obligation from utility project property remains with
481 respect to the utility cost containment bonds.

482 (9) CONSTRUCTION.—This section and all grants of power and
483 authority in this section shall be liberally construed to
484 effectuate their purposes. All incidental powers necessary to
485 carry into effect the provisions of this section are expressly
486 granted to, and conferred upon, public entities.

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

488
489 ===== T I T L E A M E N D M E N T =====

490 And the title is amended as follows:

491 Delete everything before the enacting clause
492 and insert:

493 A bill to be entitled
494 An act relating to utility projects; providing a short
495 title; providing definitions; authorizing certain
496 local government entities to finance the costs of a
497 utility project by issuing utility cost containment
498 bonds upon application by a local agency; specifying
499 application requirements; requiring that savings
500 resulting from the issuance of utility cost
501 containment bonds be used for the benefit of the
502 customers of a public utility; requiring any successor
503 entity of a local agency to assume and perform the



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504 obligations of the local agency with respect to the
505 financing of a utility project; authorizing an
506 authority to issue utility cost containment bonds for
507 specified purposes related to utility projects;
508 authorizing an authority to form alternate entities to
509 finance utility projects; requiring the governing body
510 of the authority to adopt a financing resolution and
511 impose a utility project charge on customers of a
512 publicly owned utility as a condition of utility
513 project financing; specifying required and optional
514 provisions of the financing resolution; specifying
515 powers of the authority; requiring the local agency or
516 its publicly owned utility to assist the authority in
517 the establishment or adjustment of the utility project
518 charge; requiring that customers of the public utility
519 specified in the financing resolution pay the utility
520 project charge; providing for adjustment of the
521 utility project charge; establishing ownership of the
522 revenues of the utility project charge; requiring the
523 local agency or its publicly owned utility to collect
524 the utility project charge; conditioning a customer's
525 receipt of public utility services on payment of the
526 utility project charge; authorizing a local agency or
527 its publicly owned utility to use available remedies
528 to enforce collection of the utility project charge;
529 providing that the pledge of the utility project
530 charge or the utility project property to secure
531 payment of bonds issued to finance the utility project
532 is irrevocable and cannot be reduced or impaired



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533 except under certain conditions; providing that a
534 utility project charge constitutes utility project
535 property; providing that utility project property is
536 subject to a lien to secure payment of costs relating
537 to utility cost containment bonds; establishing
538 payment priorities for the use of revenues of the
539 utility project property; providing for the issuance
540 and validation of utility cost containment bonds;
541 securing the payment of utility cost containment bonds
542 and related costs; providing that utility cost
543 containment bonds do not obligate the state or any
544 political subdivision thereof and are not backed by
545 their full faith and credit and taxing power;
546 requiring that certain disclosures be printed on
547 utility cost containment bonds; providing that
548 financing costs related to utility cost containment
549 bonds are an obligation of the authority only;
550 securing the payment of the financing costs of utility
551 cost containment bonds; prohibiting an authority with
552 outstanding payment obligations on utility cost
553 containment bonds from becoming a debtor under certain
554 federal or state laws; providing for construction;
555 endowing public entities with certain powers;
556 providing an effective date.