



549218

LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Utility Cost Containment Bond Act.—

(1) SHORT TITLE.—This section may be cited as the “Utility
Cost Containment Bond Act.”

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

(a) “Authority” means an entity created pursuant to s.
163.01(7)(g), Florida Statutes, which provides public utility



549218

11 services and whose membership consists of at least three
12 counties. The term includes any successor to the powers and
13 functions of such an entity.

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

16 1. Any part of the expense of constructing, renovating or
17 acquiring lands, structures, real or personal property, rights,
18 rights-of-way, franchises, easements, and interests acquired or
19 used for a utility project.

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

25 3. Finance charges.

26 4. Interest, as determined by the authority.

27 5. Provisions for working capital and debt service
28 reserves.

29 6. Expenses for extensions, enlargements, additions,
30 replacements, renovations, and improvements.

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

34 8. Any other expense necessary or incidental to determining
35 the feasibility of constructing any utility project or
36 incidental to the construction, acquisition, or financing of any
37 utility project.

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



549218

- 40 (d) "Financing costs" means any of the following:
41 1. Interest and redemption premiums that are payable on
42 utility cost containment bonds.
43 2. The cost of retiring the principal of utility cost
44 containment bonds, whether at maturity, including acceleration
45 of maturity upon an event of default, or upon redemption,
46 including sinking fund redemption.
47 3. The cost related to issuing or servicing utility cost
48 containment bonds, including any payment under an interest rate
49 swap agreement and any type of fee.
50 4. A payment or expense associated with a bond insurance
51 policy; financial guaranty; a contract, agreement, or other
52 credit or liquidity enhancement for bonds; or a contract,
53 agreement, or other financial agreement entered into in
54 connection with utility cost containment bonds.
55 5. Any coverage charges.
56 6. The funding of one or more reserve accounts relating to
57 utility cost containment bonds.
58 (e) "Finance" or "financing" includes refinancing.
59 (f) "Financing resolution" means a resolution adopted by
60 the governing body of an authority that provides for the
61 financing or refinancing of a utility project with utility cost
62 containment bonds and that imposes a utility project charge in
63 connection with the utility cost containment bonds in accordance
64 with subsection (4). A financing resolution may be separate from
65 a resolution authorizing the issuance of the bonds.
66 (g) "Governing body" means the body that governs a local
67 agency.
68 (h) "Local agency" means a member of the authority, or an



549218

69 agency or subdivision of that member, which is sponsoring or
70 refinancing a utility project, or any municipality, county,
71 authority, special district, public corporation, or other
72 governmental entity of the state that is sponsoring or
73 refinancing a utility project.

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

- 76 1. Water.
- 77 2. Wastewater.
- 78 3. Electric.
- 79 4. Stormwater.

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

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

- 86 1. A bond purchase agreement.
- 87 2. Bonds acquired by the authority.
- 88 3. Installment sales agreements and other revenue-producing
89 agreements entered into by the authority.
- 90 4. Utility projects financed or refinanced by the
91 authority.
- 92 5. Grants and other sources of income.
- 93 6. Moneys paid by a local agency.
- 94 7. Interlocal agreements with a local agency.
- 95 8. Interest or other income from any investment of money in
96 any fund or account established for the payment of principal,
97 interest, or premiums on utility cost containment bonds, or the



549218

98 deposit of proceeds of utility cost containment bonds.

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

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

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

115 1. The financing resolution, the utility project charge,
116 and any adjustment to the utility project charge established in
117 accordance with subsection (5).

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

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

124 (3) UTILITY PROJECTS.—

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



549218

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

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

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

138 2. The local agency will finance costs of the utility
139 project and the financing costs associated with the financing
140 will be paid from utility project property, including the
141 utility project charge for the utility cost containment bonds.

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

149 (c) A determination by the governing body that a project to
150 be financed with utility cost containment bonds is a utility
151 project is final and conclusive, and the utility cost
152 containment bonds issued to finance the utility project and the
153 utility project charge shall be valid and enforceable as set
154 forth in the financing resolution and the documents relating to
155 the utility cost containment bonds.



549218

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

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

170 (4) FINANCING UTILITY PROJECTS.—

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

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.



549218

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

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 in determining 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 the utility project charge among classes of
205 customers of the publicly owned utility. The decision of the
206 authority shall be final and conclusive, and the method of
207 calculating the utility project charge and the periodic
208 adjustment 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, electric, or stormwater service through the
212 publicly owned utility to pay the utility project charge
213 regardless of whether the customer has an agreement to receive



549218

214 water, wastewater, electric, or stormwater service from a person
215 other than the publicly owned utility.

216 c. Require that the utility project charge be charged
217 separately from other charges on the bill of customers of the
218 publicly owned utility in the class or classes of customers
219 specified in the financing resolution.

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 utility
226 project property, the authority, upon application by the
227 beneficiaries of the statutory lien as set forth in subsection
228 (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 and under s. 163.01(7)(g), Florida Statutes.

234 (5) UTILITY PROJECT CHARGE.—

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



549218

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

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

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



549218

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

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

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

293 (f) The timely and complete payment of all utility project
294 charges by the customer shall be a condition of receiving water,
295 wastewater, electric, or stormwater service from the publicly
296 owned utility. The local agency or its publicly owned utility
297 may use its established collection policies and remedies
298 provided under law to enforce collection of the utility project
299 charge. A customer liable for a utility project charge may not
300 withhold payment, in whole or in part, thereof.



549218

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

307 (6) UTILITY PROJECT PROPERTY.—

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

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

324 1. The lien secures the payment of all financing costs then
325 existing or subsequently arising to the holders of the utility
326 cost containment bonds, the trustee or representative for the
327 holders of the utility cost containment bonds, and any other
328 entity specified in the financing resolution or the documents
329 relating to the utility cost containment bonds.



549218

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

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

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

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

351 (7) UTILITY COST CONTAINMENT BONDS.—

352 (a) Utility cost containment bonds shall be issued within
353 the parameters of the financing provided by the authority
354 pursuant to this section. The proceeds of the utility cost
355 containment bonds made available to the local agency or its
356 publicly owned utility shall be used for the utility project
357 identified in the application for financing of the utility
358 project or used to refinance indebtedness of the local agency



549218

359 which financed or refinanced utility projects.

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

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

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

377 a. Continue to operate its publicly owned utility,
378 including the utility project that is being financed or
379 refinanced.

380 b. Collect the utility project charge from customers for
381 the benefit and account of the authority and the beneficiaries
382 of the pledge of the utility project charge.

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

385 2. The pledge of a utility project charge to secure payment
386 of utility cost containment bonds is irrevocable, and the state
387 or any other entity may not reduce, impair, or otherwise adjust



549218

388 the utility project charge, except that the authority shall
389 implement periodic adjustments to the utility project charge as
390 provided under subsection (5).

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

407 (e) The issuance of utility cost containment bonds does not
408 obligate the state or any political subdivision thereof to levy
409 or to pledge any form of taxation to pay the utility cost
410 containment bonds or to make any appropriation for their
411 payment. All utility cost containment bonds must contain on
412 their face a statement in substantially the following form:

413
414 "Neither the full faith and credit nor the taxing power of the
415 State of Florida or any political subdivision thereof is pledged
416 to the payment of the principal of, or interest on, this bond."



549218

417

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

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

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

440 (i) Except as otherwise provided in this section with
441 respect to adjustments to a utility project charge, the recovery
442 of the financing costs for the utility cost containment bonds
443 from the utility project charge shall be irrevocable and the
444 authority does not have the power, either by rescinding,
445 altering, or amending the applicable financing resolution, to



549218

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

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

471 (8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other
472 law, an authority that issued utility cost containment bonds may
473 not, and no governmental officer or organization shall so
474 authorize the authority to, become a debtor under the United



549218

475 States Bankruptcy Code or become the subject of any similar case
476 or proceeding under any other state or federal law if any
477 payment obligation from utility project property remains with
478 respect to the utility cost containment bonds.

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

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

485

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

487 And the title is amended as follows:

488 Delete everything before the enacting clause
489 and insert:

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



549218

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



549218

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