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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/01/2014	.	
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The Committee on Community Affairs (Soto) 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



846556

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 or stormwater service from a publicly owned utility.



846556

- 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



846556

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. Stormwater.

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

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

85 1. A bond purchase agreement.

86 2. Bonds acquired by the authority.

87 3. Installment sales agreements and other revenue-producing
88 agreements entered into by the authority.

89 4. Utility projects financed or refinanced by the
90 authority.

91 5. Grants and other sources of income.

92 6. Moneys paid by a local agency.

93 7. Interlocal agreements with a local agency.

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



846556

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

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

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

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

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

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

123 (3) UTILITY PROJECTS.—

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



846556

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

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

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

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

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

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

154 (d) If a local agency that has outstanding utility cost
155 containment bonds ceases to operate a water, wastewater, or



846556

156 stormwater utility, directly or through its publicly owned
157 utility, references in this section to the local agency or to
158 its publicly owned utility shall be to the successor entity. The
159 successor entity shall assume and perform all obligations of the
160 local agency and its publicly owned utility required by this
161 section and shall assume the servicing agreement required under
162 subsection (4) while the utility cost containment bonds remain
163 outstanding.

164 (4) FINANCING UTILITY PROJECTS.—

165 (a) An authority may issue utility cost containment bonds
166 to finance or refinance utility projects; refinance debt of a
167 local agency incurred in financing or refinancing utility
168 projects, provided such refinancing results in present value
169 savings to the local agency; or, with the approval of the local
170 agency, refinance previously issued utility cost containment
171 bonds.

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

173 a. Form a single-purpose limited liability company and
174 authorize the company to adopt the financing resolution of such
175 utility project; or

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

179 2. A single-purpose limited liability company or a single-
180 purpose entity may be created by the authority solely for the
181 purpose of performing the duties and responsibilities of the
182 authority specified in this section and shall constitute an
183 authority for all purposes of this section. Reference to the
184 authority includes a company or entity created under this



846556

185 paragraph.

186 (b) The governing body of an authority that is financing
187 the costs of a utility project shall adopt a financing
188 resolution and shall impose a utility project charge as
189 described in subsection (5). All provisions of a financing
190 resolution adopted pursuant to this section are binding on the
191 authority.

192 1. The financing resolution must:

193 a. Provide a brief description of the financial calculation
194 method the authority will use in determining the utility project
195 charge. The calculation method shall include a periodic
196 adjustment methodology to be applied at least annually to the
197 utility project charge. The authority shall establish the
198 allocation of the utility project charge among classes of
199 customers of the publicly owned utility. The decision of the
200 authority shall be final and conclusive, and the method of
201 calculating the utility project charge and the periodic
202 adjustment may not be changed.

203 b. Require each customer in the class or classes of
204 customers specified in the financing resolution who receives
205 water, wastewater, or stormwater service through the publicly
206 owned utility to pay the utility project charge regardless of
207 whether the customer has an agreement to receive water,
208 wastewater, or stormwater service from a person other than the
209 publicly owned utility.

210 c. Require that the utility project charge be charged
211 separately from other charges on the bill of customers of the
212 publicly owned utility in the class or classes of customers
213 specified in the financing resolution.



846556

214 d. Require that the authority enter into a servicing
215 agreement with the local agency or its publicly owned utility to
216 collect the utility project charge.

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

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

228 (5) UTILITY PROJECT CHARGE.—

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

237 (b) The utility project charge is a nonbypassable charge to
238 all present and future customers of the publicly owned utility
239 in the class or classes of customers specified in the financing
240 resolution upon its adoption. If a customer of the publicly
241 owned utility that is subject to a utility project charge enters
242 into an agreement to purchase water, wastewater, or stormwater



846556

243 service from a person other than the publicly owned utility, the
244 customer shall remain liable for the payment of the utility
245 project charge as if the customer had not entered into the
246 agreement. The customer may discharge the liability by
247 continuing to pay the utility project charge as it accrues or by
248 making a one-time payment, as determined by the authority.

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

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

267 2. The adjustment may not impose the utility project charge
268 on a class of customers that was not subject to the utility
269 project charge pursuant to the financing resolution imposing the
270 utility project charge.

271 (d) Revenues from a utility project charge are special



846556

272 revenues of the authority and do not constitute revenue of the
273 local agency or its publicly owned utility for any purpose,
274 including, but not limited to, any dedication, commitment, or
275 pledge of revenue, receipts, or other income that the local
276 agency or its publicly owned utility has made or will make for
277 the security of any of its obligations.

278 (e) The local agency or its publicly owned utility shall
279 act as a servicing agent for collecting the utility project
280 charge throughout the duration of the servicing agreement
281 required by the financing resolution. The local agency or its
282 publicly owned utility shall hold the money collected in trust
283 for the exclusive benefit of the persons entitled to have the
284 financing costs paid from the utility project charge. Such
285 moneys do not lose their character as revenues of the authority
286 by virtue of possession by the local agency or its publicly
287 owned utility.

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

296 (g) The pledge of a utility project charge to secure
297 payment of utility cost containment bonds is irrevocable, and
298 the state, or any other entity, may not reduce, impair, or
299 otherwise adjust the utility project charge, except that the
300 authority shall implement the periodic adjustments to the



846556

301 utility project charge as provided under this subsection.

302 (6) UTILITY PROJECT PROPERTY.—

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

315 (b) Upon the effective date of the financing resolution,
316 the utility project property is subject to a first priority
317 statutory lien to secure the payment of the utility cost
318 containment bonds.

319 1. The lien secures the payment of all financing costs then
320 existing or subsequently arising to the holders of the utility
321 cost containment bonds, the trustee or representative for the
322 holders of the utility cost containment bonds, and any other
323 entity specified in the financing resolution or the documents
324 relating to the utility cost containment bonds.

325 2. The lien attaches to the utility project property
326 regardless of the current ownership of the utility project
327 property, including any local agency or its publicly owned
328 utility, the authority, or other person.

329 3. Upon the effective date of the financing resolution, the



846556

330 lien is valid and enforceable against the owner of the utility
331 project property and all third parties and additional public
332 notice is not required.

333 4. The lien is a continuously perfected lien on all
334 revenues and proceeds generated from the utility project
335 property, regardless of whether the revenues or proceeds have
336 accrued.

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

346 (7) UTILITY COST CONTAINMENT BONDS.—

347 (a) Utility cost containment bonds shall be issued within
348 the parameters of the financing provided by the authority
349 pursuant to this section. The proceeds of the utility cost
350 containment bonds made available to the local agency or its
351 publicly owned utility shall be used for the utility project
352 identified in the application for financing of the utility
353 project or used to refinance indebtedness of the local agency
354 which financed or refinanced utility projects.

355 (b) Utility cost containment bonds shall be issued in
356 accordance with this section and s. 163.01(7)(g)8., Florida
357 Statutes, and may be validated pursuant to s. 163.01(7)(g)9.,
358 Florida Statutes.



846556

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

367 1. If utility project property is pledged as security for
368 the payment of utility cost containment bonds, the local agency
369 or its publicly owned utility shall enter into a contract with
370 the authority which requires, at a minimum, that the publicly
371 owned utility:

372 a. Continue to operate its publicly owned utility,
373 including the utility project that is being financed or
374 refinanced.

375 b. Collect the utility project charge from customers for
376 the benefit and account of the authority and the beneficiaries
377 of the pledge of the utility project charge.

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

380 2. The pledge of a utility project charge to secure payment
381 of utility cost containment bonds is irrevocable, and the state
382 or any other entity may not reduce, impair, or otherwise adjust
383 the utility project charge, except that the authority shall
384 implement periodic adjustments to the utility project charge as
385 provided under subsection (5).

386 (d) Utility cost containment bonds shall be nonrecourse to
387 the credit or any assets of the local agency or the publicly



846556

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

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

408
409 "Neither the full faith and credit nor the taxing power of the
410 State of Florida or any political subdivision thereof is pledged
411 to the payment of the principal of, or interest on, this bond."

412
413 (f) Notwithstanding any other law or this section, a
414 financing resolution or other resolution of the authority, or
415 documents relating to utility cost containment bonds, the
416 authority may not rescind, alter, or amend any resolution or



846556

417 document that pledges utility cost charges for payment of
418 utility cost containment bonds.

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

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

435 (i) Except as otherwise provided in this section with
436 respect to adjustments to a utility project charge, the recovery
437 of the financing costs for the utility cost containment bonds
438 from the utility project charge is irrevocable and the authority
439 does not have the power, by rescinding, altering, or amending
440 the applicable financing resolution, to revalue or revise for
441 ratemaking purposes the financing costs of utility cost
442 containment bonds; to determine that the financing costs for the
443 related utility cost containment bonds or the utility project
444 charge is unjust or unreasonable; or to in any way reduce or
445 impair the value of utility project property that includes the



846556

446 utility project charge, either directly or indirectly. The
447 amount of revenues arising with respect to the financing costs
448 for the related utility cost containment bonds or the utility
449 project charge is not subject to reduction, impairment,
450 postponement, or termination for any reason until all financing
451 costs to be paid from the utility project charge are fully met
452 and discharged.

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

466 (8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other
467 law, an authority that issued utility cost containment bonds may
468 not, and no governmental officer or organization shall so
469 authorize the authority to, become a debtor under the United
470 States Bankruptcy Code or become the subject of any similar case
471 or proceeding under any other state or federal law if any
472 payment obligation from utility project property remains with
473 respect to the utility cost containment bonds.

474 (9) CONSTRUCTION.—This section and all grants of power and



846556

475 authority in this section shall be liberally construed to
476 effectuate their purposes. All incidental powers necessary to
477 carry into effect the provisions of this section are expressly
478 granted to, and conferred upon, public entities.

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

480

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

482 And the title is amended as follows:

483 Delete everything before the enacting clause
484 and insert:

485 A bill to be entitled
486 An act relating to utility projects; providing a short
487 title; providing definitions; authorizing certain
488 local government entities to finance the cost of a
489 utility project by issuing utility cost containment
490 bonds upon application by a local agency; specifying
491 application requirements; requiring any successor
492 entity of a local agency to assume and perform the
493 obligations of the local agency with respect to the
494 financing of a utility project; authorizing an
495 authority to issue utility cost containment bonds for
496 specified purposes related to utility projects;
497 authorizing an authority to form alternate entities to
498 finance utility projects; requiring the governing body
499 of the authority to adopt a financing resolution and
500 impose a utility project charge on customers of a
501 publicly owned utility as a condition of utility
502 project financing; specifying required and optional
503 provisions of the financing resolution; specifying



504 powers of the authority; requiring the local agency or
505 its publicly owned utility to assist the authority in
506 the establishment or adjustment of the utility project
507 charge; requiring that customers of the public utility
508 specified in the financing resolution pay the utility
509 project charge; providing for adjustment of the
510 utility project charge; establishing ownership of the
511 revenues of the utility project charge; requiring the
512 local agency or its publicly owned utility to collect
513 the utility project charge; conditioning a customer's
514 receipt of public utility services on payment of the
515 utility project charge; authorizing a local agency or
516 its publicly owned utility to use available remedies
517 to enforce collection of the utility project charge;
518 providing that the pledge of the utility project
519 charge or the utility project property to secure
520 payment of bonds issued to finance the utility project
521 is irrevocable and cannot be reduced or impaired
522 except under certain conditions; providing that a
523 utility project charge constitutes utility project
524 property; providing that utility project property is
525 subject to a lien to secure payment of costs relating
526 to utility cost containment bonds; establishing
527 payment priorities for the use of revenues of the
528 utility project property; providing for the issuance
529 and validation of utility cost containment bonds;
530 securing the payment of utility cost containment bonds
531 and related costs; providing that utility cost
532 containment bonds do not obligate the state or any



846556

533 political subdivision thereof and are not backed by
534 their full faith and credit and taxing power;
535 requiring that a disclosure be printed on utility cost
536 containment bonds; providing that financing costs
537 related to utility cost containment bonds are solely
538 the obligation of the authority; securing the payment
539 of the financing costs of utility cost containment
540 bonds; prohibiting an authority with outstanding
541 payment obligations on utility cost containment bonds
542 from becoming a debtor under certain federal or state
543 laws; providing for construction; conferring certain
544 powers on public entities; providing an effective
545 date.