

By the Committee on Community Affairs; and Senator Legg

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1 A bill to be entitled
2 An act relating to utility projects; providing a short
3 title; providing definitions; authorizing certain
4 local government entities to finance the costs of a
5 utility project by issuing utility cost containment
6 bonds upon application by a local agency; specifying
7 application requirements; requiring that savings
8 resulting from the issuance of utility cost
9 containment bonds be used for the benefit of the
10 customers of a public utility; requiring any successor
11 entity of a local agency to assume and perform the
12 obligations of the local agency with respect to the
13 financing of a utility project; authorizing an
14 authority to issue utility cost containment bonds for
15 specified purposes related to utility projects;
16 authorizing an authority to form alternate entities to
17 finance utility projects; requiring the governing body
18 of the authority to adopt a financing resolution and
19 impose a utility project charge on customers of a
20 publicly owned utility as a condition of utility
21 project financing; specifying required and optional
22 provisions of the financing resolution; specifying
23 powers of the authority; requiring the local agency or
24 its publicly owned utility to assist the authority in
25 the establishment or adjustment of the utility project
26 charge; requiring that customers of the public utility
27 specified in the financing resolution pay the utility
28 project charge; providing for adjustment of the
29 utility project charge; establishing ownership of the

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30 revenues of the utility project charge; requiring the
31 local agency or its publicly owned utility to collect
32 the utility project charge; conditioning a customer's
33 receipt of public utility services on payment of the
34 utility project charge; authorizing a local agency or
35 its publicly owned utility to use available remedies
36 to enforce collection of the utility project charge;
37 providing that the pledge of the utility project
38 charge or the utility project property to secure
39 payment of bonds issued to finance the utility project
40 is irrevocable and cannot be reduced or impaired
41 except under certain conditions; providing that a
42 utility project charge constitutes utility project
43 property; providing that utility project property is
44 subject to a lien to secure payment of costs relating
45 to utility cost containment bonds; establishing
46 payment priorities for the use of revenues of the
47 utility project property; providing for the issuance
48 and validation of utility cost containment bonds;
49 securing the payment of utility cost containment bonds
50 and related costs; providing that utility cost
51 containment bonds do not obligate the state or any
52 political subdivision thereof and are not backed by
53 their full faith and credit and taxing power;
54 requiring that certain disclosures be printed on
55 utility cost containment bonds; providing that
56 financing costs related to utility cost containment
57 bonds are an obligation of the authority only;
58 securing the payment of the financing costs of utility

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59 cost containment bonds; prohibiting an authority with
60 outstanding payment obligations on utility cost
61 containment bonds from becoming a debtor under certain
62 federal or state laws; providing for construction;
63 endowing public entities with certain powers;
64 providing an effective date.

65
66 Be It Enacted by the Legislature of the State of Florida:

67
68 Section 1. Utility Cost Containment Bond Act.—

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

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

72 (a) “Authority” means an entity created pursuant to s.
73 163.01(7)(g), Florida Statutes, which provides public utility
74 services and whose membership consists of at least three
75 counties. The term includes any successor to the powers and
76 functions of such an entity.

77 (b) “Cost,” as applied to a utility project or a portion of
78 a utility project financed under this act, means any of the
79 following:

80 1. Any part of the expense of constructing, renovating or
81 acquiring lands, structures, real or personal property, rights,
82 rights-of-way, franchises, easements, and interests acquired or
83 used for a utility project.

84 2. The expense of demolishing or removing any buildings or
85 structures on acquired land, including the expense of acquiring
86 any lands to which the buildings or structures may be moved, and
87 the cost of all machinery and equipment used for the demolition

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88 or removal.

89 3. Finance charges.

90 4. Interest, as determined by the authority.

91 5. Provisions for working capital and debt service
92 reserves.

93 6. Expenses for extensions, enlargements, additions,
94 replacements, renovations, and improvements.

95 7. Expenses for architectural, engineering, financial,
96 accounting, and legal services, plans, specifications,
97 estimates, and administration.

98 8. Any other expense necessary or incidental to determining
99 the feasibility of constructing any utility project or
100 incidental to the construction, acquisition, or financing of any
101 utility project.

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

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

105 1. Interest and redemption premiums that are payable on
106 utility cost containment bonds.

107 2. The cost of retiring the principal of utility cost
108 containment bonds, whether at maturity, including acceleration
109 of maturity upon an event of default, or upon redemption,
110 including sinking fund redemption.

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

114 4. A payment or expense associated with a bond insurance
115 policy; financial guaranty; a contract, agreement, or other
116 credit or liquidity enhancement for bonds; or a contract,

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117 agreement, or other financial agreement entered into in
118 connection with utility cost containment bonds.

119 5. Any coverage charges.

120 6. The funding of one or more reserve accounts relating to
121 utility cost containment bonds.

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

123 (f) "Financing resolution" means a resolution adopted by
124 the governing body of an authority that provides for the
125 financing or refinancing of a utility project with utility cost
126 containment bonds and that imposes a utility project charge in
127 connection with the utility cost containment bonds in accordance
128 with subsection (4). A financing resolution may be separate from
129 a resolution authorizing the issuance of the bonds.

130 (g) "Governing body" means the body that governs a local
131 agency.

132 (h) "Local agency" means a member of the authority, or an
133 agency or subdivision of that member, which is sponsoring or
134 refinancing a utility project, or any municipality, county,
135 authority, special district, public corporation, or other
136 governmental entity of the state that is sponsoring or
137 refinancing a utility project.

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

140 1. Water.

141 2. Wastewater.

142 3. Stormwater.

143

144 The term does not include internet or cable services.

145 (j) "Publicly owned utility" means a utility furnishing

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146 water, wastewater, or stormwater service that is owned and
147 operated by a local agency. The term includes any successor to
148 the powers and functions of such a utility.

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

151 1. A bond purchase agreement.

152 2. Bonds acquired by the authority.

153 3. Installment sales agreements and other revenue-producing
154 agreements entered into by the authority.

155 4. Utility projects financed or refinanced by the
156 authority.

157 5. Grants and other sources of income.

158 6. Moneys paid by a local agency.

159 7. Interlocal agreements with a local agency.

160 8. Interest or other income from any investment of money in
161 any fund or account established for the payment of principal,
162 interest, or premiums on utility cost containment bonds, or the
163 deposit of proceeds of utility cost containment bonds.

164 (l) "Utility cost containment bonds" means bonds, notes,
165 commercial paper, variable rate securities, and any other
166 evidence of indebtedness issued by an authority, the proceeds of
167 which are used directly or indirectly to pay or reimburse a
168 local agency or its publicly owned utility for the costs of a
169 utility project, and which are secured by a pledge of, and are
170 payable from, utility project property.

171 (m) "Utility project" means the acquisition, construction,
172 installation, retrofitting, rebuilding, or other addition to or
173 improvement of any equipment, device, structure, process,
174 facility, technology, rights, or property located within or

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175 outside this state which is used in connection with the
176 operations of a publicly owned utility.

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

180 1. The financing resolution, the utility project charge,
181 and any adjustment to the utility project charge established in
182 accordance with subsection (5).

183 2. The financing costs of the utility cost containment
184 bonds and all revenues, and all collections, claims, payments,
185 moneys, or proceeds for, or arising from, the utility project
186 charge.

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

189 (3) UTILITY PROJECTS.—

190 (a) A local agency that owns and operates a publicly owned
191 utility may apply to an authority to finance the costs of a
192 utility project using the proceeds of utility cost containment
193 bonds. In its application to the authority, the local agency
194 shall specify the utility project to be financed by the utility
195 cost containment bonds and the maximum principal amount, the
196 maximum interest rate, and the maximum stated terms of the
197 utility cost containment bonds.

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

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

203 2. The local agency will finance costs of the utility

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204 project and the financing costs associated with the financing
205 will be paid from utility project property, including the
206 utility project charge for the utility cost containment bonds.

207 3. Based on the best information available to the governing
208 body, the rates charged to the local agency's retail customers
209 by the publicly owned utility, including the utility project
210 charge resulting from the financing of the utility project with
211 utility cost containment bonds, are expected to be lower than
212 the rates that would be charged if the project was financed with
213 bonds payable from revenues of the publicly owned utility.

214 (c) A determination by the governing body that a project to
215 be financed with utility cost containment bonds is a utility
216 project is final and conclusive, and the utility cost
217 containment bonds issued to finance the utility project and the
218 utility project charge shall be valid and enforceable as set
219 forth in the financing resolution and the documents relating to
220 the utility cost containment bonds.

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

225 (e) If a local agency that has outstanding utility cost
226 containment bonds ceases to operate a water, wastewater, or
227 stormwater utility, directly or through its publicly owned
228 utility, references in this section to the local agency or to
229 its publicly owned utility shall be to the successor entity. The
230 successor entity shall assume and perform all obligations of the
231 local agency and its publicly owned utility required by this
232 section and shall assume the servicing agreement required under

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233 subsection (4) while the utility cost containment bonds remain
234 outstanding.

235 (4) FINANCING UTILITY PROJECTS.—

236 (a) An authority may issue utility cost containment bonds
237 to finance or refinance utility projects; refinance debt of a
238 local agency incurred in financing or refinancing utility
239 projects, provided such refinancing results in present value
240 savings to the local agency; or, with the approval of the local
241 agency, refinance previously issued utility cost containment
242 bonds.

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

244 a. Form a single-purpose limited liability company and
245 authorize the company to adopt the financing resolution of such
246 utility project; or

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

250 2. A single-purpose limited liability company or a single-
251 purpose entity may be created by the authority solely for the
252 purpose of performing the duties and responsibilities of the
253 authority specified in this section and shall constitute an
254 authority for all purposes of this section. Reference to the
255 authority includes a company or entity created under this
256 paragraph.

257 (b) The governing body of an authority that is financing
258 the costs of a utility project shall adopt a financing
259 resolution and shall impose a utility project charge as
260 described in subsection (5). All provisions of a financing
261 resolution adopted pursuant to this section are binding on the

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262 authority.

263 1. The financing resolution must:

264 a. Provide a brief description of the financial calculation
265 method the authority will use in determining the utility project
266 charge. The calculation method shall include a periodic
267 adjustment methodology to be applied at least annually to the
268 utility project charge. The authority shall establish the
269 allocation of the utility project charge among classes of
270 customers of the publicly owned utility. The decision of the
271 authority shall be final and conclusive, and the method of
272 calculating the utility project charge and the periodic
273 adjustment may not be changed;

274 b. Require each customer in the class or classes of
275 customers specified in the financing resolution who receives
276 water, wastewater, or stormwater service through the publicly
277 owned utility to pay the utility project charge regardless of
278 whether the customer has an agreement to receive water,
279 wastewater, or stormwater service from a person other than the
280 publicly owned utility;

281 c. Require that the utility project charge be charged
282 separately from other charges on the bill of customers of the
283 publicly owned utility in the class or classes of customers
284 specified in the financing resolution; and

285 d. Require that the authority enter into a servicing
286 agreement with the local agency or its publicly owned utility to
287 collect the utility project charge.

288 2. The authority may require in the financing resolution
289 that, in the event of a default by the local agency or its
290 publicly owned utility with respect to revenues from the utility

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291 project property, the authority, upon application by the
292 beneficiaries of the statutory lien as set forth in subsection
293 (6), shall order the sequestration and payment to the
294 beneficiaries of revenues arising from utility project property.
295 This provision does not limit any other remedies available to
296 the beneficiaries by reason of default.

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

299 (5) UTILITY PROJECT CHARGE.—

300 (a) The authority shall impose a sufficient utility project
301 charge, based on estimates of water, wastewater, or stormwater
302 service usage, to ensure timely payment of all financing costs
303 with respect to utility cost containment bonds. The local agency
304 or its publicly owned utility shall provide the authority with
305 information concerning the publicly owned utility which may be
306 required by the authority in establishing the utility project
307 charge.

308 (b) The utility project charge is a nonbypassable charge to
309 all present and future customers of the publicly owned utility
310 in the class or classes of customers specified in the financing
311 resolution upon its adoption. If a customer of the publicly
312 owned utility that is subject to a utility project charge enters
313 into an agreement to purchase water, wastewater, or stormwater
314 service from a supplier other than the publicly owned utility,
315 the customer shall remain liable for the payment of the utility
316 project charge if the customer has received any service or
317 benefit from the publicly owned utility subsequent to the date
318 the utility project charged is imposed.

319 (c) The authority shall determine at least annually and at

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320 such additional intervals as provided in the financing
321 resolution and documents related to the applicable utility cost
322 containment bonds whether adjustments to the utility project
323 charge are required. The authority shall use the adjustment to
324 correct for any overcollection or undercollection of financing
325 costs from the utility project charge or to make any other
326 adjustment necessary to ensure the timely payment of the
327 financing costs of the utility cost containment bonds, including
328 adjustment of the utility project charge to pay any debt service
329 coverage requirement for the utility cost containment bonds. The
330 local agency or its publicly owned utility shall provide the
331 authority with information concerning the publicly owned utility
332 which may be required by the authority in adjusting the utility
333 project charge.

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

337 2. The adjustment may not impose the utility project charge
338 on a class of customers that was not subject to the utility
339 project charge pursuant to the financing resolution imposing the
340 utility project charge.

341 (d) Revenues from a utility project charge are special
342 revenues of the authority and do not constitute revenue of the
343 local agency or its publicly owned utility for any purpose,
344 including, but not limited to, any dedication, commitment, or
345 pledge of revenue, receipts, or other income that the local
346 agency or its publicly owned utility has made or will make for
347 the security of any of its obligations.

348 (e) The local agency or its publicly owned utility shall

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349 act as a servicing agent for collecting the utility project
350 charge throughout the duration of the servicing agreement
351 required by the financing resolution. The local agency or its
352 publicly owned utility shall hold the money collected in trust
353 for the exclusive benefit of the persons entitled to have the
354 financing costs paid from the utility project charge and the
355 money does not lose its character as revenues of the authority
356 by virtue of possession by the local agency or its publicly
357 owned utility.

358 (f) The timely and complete payment of all utility project
359 charges by the customer shall be a condition of receiving water,
360 wastewater, or stormwater service from the publicly owned
361 utility. The local agency or its publicly owned utility may use
362 its established collection policies and remedies provided under
363 law to enforce collection of the utility project charge. A
364 customer liable for a utility project charge may not withhold
365 payment, in whole or in part, thereof.

366 (g) The pledge of a utility project charge to secure
367 payment of utility cost containment bonds is irrevocable, and
368 the state, or any other entity, may not reduce, impair, or
369 otherwise adjust the utility project charge, except that the
370 authority shall implement the periodic adjustments to the
371 utility project charge as provided under this subsection.

372 (6) UTILITY PROJECT PROPERTY.—

373 (a) A utility project charge constitutes utility project
374 property on the effective date of the financing resolution
375 authorizing such utility project charge. Utility project
376 property constitutes property, including for contracts securing
377 utility cost containment bonds, regardless of whether the

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378 revenues and proceeds arising with respect to the utility
379 project property have accrued. Utility project property shall
380 continuously exist as property for all purposes with all of the
381 rights and privileges of this section for the period provided in
382 the financing resolution or until all financing costs with
383 respect to the related utility cost containment bonds are paid
384 in full, whichever occurs first.

385 (b) Upon the effective date of the financing resolution,
386 the utility project property is subject to a first priority
387 statutory lien to secure the payment of the utility cost
388 containment bonds.

389 1. The lien secures the payment of all financing costs then
390 existing or subsequently arising to the holders of the utility
391 cost containment bonds, the trustee or representative for the
392 holders of the utility cost containment bonds, and any other
393 entity specified in the financing resolution or the documents
394 relating to the utility cost containment bonds.

395 2. The lien attaches to the utility project property
396 regardless of the current ownership of the utility project
397 property, including any local agency or its publicly owned
398 utility, the authority, or other person.

399 3. Upon the effective date of the financing resolution, the
400 lien is valid and enforceable against the owner of the utility
401 project property and all third parties, and additional public
402 notice is not required.

403 4. The lien is a continuously perfected lien on all
404 revenues and proceeds generated from the utility project
405 property, regardless of whether the revenues or proceeds have
406 accrued.

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407 (c) All revenues with respect to utility project property
408 related to utility cost containment bonds, including payments of
409 the utility project charge, shall be applied first to the
410 payment of the financing costs of the utility cost containment
411 bonds then due, including the funding of reserves for the
412 utility cost containment bonds. Any excess revenues shall be
413 applied as determined by the authority for the benefit of the
414 utility for which the utility cost containment bonds were
415 issued.

416 (7) UTILITY COST CONTAINMENT BONDS.—

417 (a) Utility cost containment bonds shall be issued within
418 the parameters of the financing provided by the authority
419 pursuant to this section. The proceeds of the utility cost
420 containment bonds made available to the local agency or its
421 publicly owned utility shall be used for the utility project
422 identified in the application for financing of the utility
423 project or used to refinance indebtedness of the local agency
424 which financed or refinanced utility projects.

425 (b) Utility cost containment bonds shall be issued in
426 accordance with this section and s. 163.01(7)(g)8., Florida
427 Statutes, and may be validated pursuant to s. 163.01(7)(g)9.,
428 Florida Statutes.

429 (c) The authority shall pledge the utility project property
430 as security for the payment of the utility cost containment
431 bonds. All rights of an authority with respect to utility
432 project property pledged as security for the payment of utility
433 cost containment bonds shall be for the benefit of, and
434 enforceable by, the beneficiaries of the pledge to the extent
435 provided in the financing documents relating to the utility cost

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436 containment bonds.

437 1. If utility project property is pledged as security for
438 the payment of utility cost containment bonds, the local agency
439 or its publicly owned utility shall enter into a contract with
440 the authority which requires, at a minimum, that the publicly
441 owned utility:

442 a. Continue to operate its publicly owned utility,
443 including the utility project that is being financed or
444 refinanced;

445 b. Collect the utility project charge from customers for
446 the benefit and account of the authority and the beneficiaries
447 of the pledge of the utility project charge; and

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

450 2. The pledge of a utility project charge to secure payment
451 of utility cost containment bonds is irrevocable, and the state
452 or any other entity may not reduce, impair, or otherwise adjust
453 the utility project charge, except that the authority shall
454 implement periodic adjustments to the utility project charge as
455 provided under subsection (5).

456 (d) Utility cost containment bonds shall be nonrecourse to
457 the credit or any assets of the local agency or the publicly
458 owned utility but shall be payable from, and secured by a pledge
459 of, the utility project property relating to the utility cost
460 containment bonds and any additional security or credit
461 enhancement specified in the documents relating to the utility
462 cost containment bonds. If, pursuant to subsection (4), the
463 authority is financing the project through a single-purpose
464 limited liability company, the utility cost containment bonds

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465 shall be payable from, and secured by, a pledge of amounts paid
466 by the company to the authority from the applicable utility
467 project property. This provision shall be the exclusive method
468 of perfecting a pledge of utility project property by the
469 company securing the payment of financing costs under any
470 agreement of the company in connection with the issuance of
471 utility cost containment bonds.

472 (e) The issuance of utility cost containment bonds does not
473 obligate the state or any political subdivision thereof to levy
474 or to pledge any form of taxation to pay the utility cost
475 containment bonds or to make any appropriation for their
476 payment. All utility cost containment bonds must contain on
477 their face a statement in substantially the following form:

478
479 "Neither the full faith and credit nor the taxing power of the
480 State of Florida or any political subdivision thereof is pledged
481 to the payment of the principal of, or interest on, this bond."

482
483 (f) Notwithstanding any other law or this section, a
484 financing resolution or other resolution of the authority, or
485 documents relating to utility cost containment bonds, the
486 authority may not rescind, alter, or amend any resolution or
487 document that pledges utility cost charges for payment of
488 utility cost containment bonds.

489 (g) Subject to the terms of the pledge document created
490 under this part, the validity and relative priority of a pledge
491 is not defeated or adversely affected by the commingling of
492 revenues generated by the utility project property with other
493 funds of the local agency or the publicly owned utility

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494 collecting a utility project charge on behalf of an authority.

495 (h) Financing costs in connection with utility cost
496 containment bonds are a special obligation of the authority and
497 do not constitute a liability of the state or any political
498 subdivision thereof. Financing costs are not a pledge of the
499 full faith and credit of the state or any political subdivision
500 thereof, including the authority, but are payable solely from
501 the funds in the documents relating to the utility cost
502 containment bonds. This provision does not preclude guarantees
503 or credit enhancements in connection with utility cost
504 containment bonds.

505 (i) Except as otherwise provided in this section with
506 respect to adjustments to a utility project charge, the recovery
507 of the financing costs for the utility cost containment bonds
508 from the utility project charge shall be irrevocable and the
509 authority does not have the power, either by rescinding,
510 altering, or amending the applicable financing resolution, to
511 revalue or revise for ratemaking purposes the financing costs of
512 utility cost containment bonds; to determine that the financing
513 costs for the related utility cost containment bonds or the
514 utility project charge is unjust or unreasonable; or to in any
515 way reduce or impair the value of utility project property that
516 includes the utility project charge, either directly or
517 indirectly. The amount of revenues arising with respect to the
518 financing costs for the related utility cost containment bonds
519 or the utility project charge are not subject to reduction,
520 impairment, postponement, or termination for any reason until
521 all financing costs to be paid from the utility project charge
522 are fully met and discharged.

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523 (j) Except as provided in subsection (5) with respect to
524 adjustments to a utility project charge, the state does hereby
525 pledge and agree with the owners of utility cost containment
526 bonds that the state shall neither limit nor alter the financing
527 costs or the utility project property, including the utility
528 project charge, relating to the utility cost containment bonds,
529 or any rights in, to, or under the utility project property
530 until all financing costs with respect to the utility cost
531 containment bonds are fully met and discharged. This paragraph
532 does not preclude limitation or alteration if adequate provision
533 is made by law for the protection of the owners. The authority
534 may include this pledge by the state in the governing documents
535 for utility cost containment bonds.

536 (8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other
537 law, an authority that issued utility cost containment bonds may
538 not, and no governmental officer or organization shall so
539 authorize the authority to, become a debtor under the United
540 States Bankruptcy Code or become the subject of any similar case
541 or proceeding under any other state or federal law if any
542 payment obligation from utility project property remains with
543 respect to the utility cost containment bonds.

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

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

550