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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/24/2015	.	
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The Committee on Communications, Energy, and Public Utilities
(Hukill) recommended the following:

Senate Amendment

Delete lines 101 - 367

and insert:

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

(d) "Finance" or "financing" includes refinancing.

(e) "Financing cost" means:

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



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11 2. The cost of retiring the principal of utility cost
12 containment bonds, whether at maturity, including acceleration
13 of maturity upon an event of default, or upon redemption,
14 including sinking fund redemption;

15 3. The cost related to issuing or servicing utility cost
16 containment bonds, including any payment under an interest rate
17 swap agreement and any type of fee;

18 4. A payment or expense associated with a bond insurance
19 policy; financial guaranty; contract, agreement, or other credit
20 or liquidity enhancement for bonds; or contract, agreement, or
21 other financial agreement entered into in connection with
22 utility cost containment bonds;

23 5. Any coverage charges; or

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

26 (f) "Financing resolution" means a resolution adopted by
27 the governing body of an authority that provides for the
28 financing or refinancing of a utility project with utility cost
29 containment bonds and that imposes a utility project charge in
30 connection with the utility cost containment bonds in accordance
31 with subsection (4). A financing resolution may be separate from
32 a resolution authorizing the issuance of the bonds.

33 (g) "Governing body" means the body that governs a local
34 agency.

35 (h) "Local agency" means a member of the authority, or an
36 agency or subdivision of that member, that is sponsoring or
37 refinancing a utility project, or any municipality, county,
38 authority, special district, public corporation, regional water
39 authority, or other governmental entity of the state that is



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40 sponsoring or refinancing a utility project.

41 (i) "Public utility services" means water or wastewater
42 services provided by a publicly owned utility. The term does not
43 include communications services, as defined in s. 202.11,
44 Florida Statutes, Internet access services, or information
45 services.

46 (j) "Publicly owned utility" means a utility providing
47 retail or wholesale water or wastewater services that is owned
48 and operated by a local agency. The term includes any successor
49 to the powers and functions of such a utility.

50 (k) "Revenue" means income and receipts of the authority
51 related to the financing of utility projects and issuance of
52 utility cost containment bonds, including any of the following:

53 1. Bond purchase agreements;
54 2. Bonds acquired by the authority;
55 3. Installment sales agreements and other revenue-producing
56 agreements entered into by the authority;

57 4. Utility projects financed or refinanced by the
58 authority;

59 5. Grants and other sources of income;

60 6. Moneys paid by a local agency;

61 7. Interlocal agreements with a local agency, including all
62 service agreements; or

63 8. Interest or other income from any investment of money in
64 any fund or account established for the payment of principal,
65 interest, or premiums on utility cost containment bonds, or the
66 deposit of proceeds of utility cost containment bonds.

67 (l) "Utility cost containment bonds" means bonds, notes,
68 commercial paper, variable rate securities, and any other



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69 evidence of indebtedness issued by an authority the proceeds of
70 which are used directly or indirectly to pay or reimburse a
71 local agency or its publicly owned utility for the costs of a
72 utility project and which are secured by a pledge of, and are
73 payable from, utility project property.

74 (m) "Utility project" means the acquisition, construction,
75 installation, retrofitting, rebuilding, or other addition to or
76 improvement of any equipment, device, structure, process,
77 facility, technology, rights, or property located within or
78 outside this state which is used in connection with the
79 operations of a publicly owned utility.

80 (n) "Utility project charge" means a charge levied on
81 customers of a publicly owned utility to pay the financing costs
82 of utility cost containment bonds issued under subsection (4).
83 The term includes any adjustments to the utility project charge
84 under subsection (5).

85 (o) "Utility project property" means the property right
86 created pursuant to subsection (6). The term does not include
87 any interest in a customer's real or personal property but
88 includes the right, title, and interest of an authority in any
89 of the following:

90 1. The financing resolution, the utility project charge,
91 and any adjustment to the utility project charge established in
92 accordance with subsection (5);

93 2. The financing costs of the utility cost containment
94 bonds and all revenues, and all collections, claims, payments,
95 moneys, or proceeds for, or arising from, the utility project
96 charge; or

97 3. All rights to obtain adjustments to the utility project



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98 charge pursuant to subsection (5).

99 (3) UTILITY PROJECTS.—

100 (a) A local agency that owns and operates a publicly owned
101 utility may apply to an authority to finance the costs of a
102 utility project using the proceeds of utility cost containment
103 bonds. In its application to the authority, the local agency
104 shall specify the utility project to be financed by the utility
105 cost containment bonds and the maximum principal amount, the
106 maximum interest rate, and the maximum stated terms of the
107 utility cost containment bonds.

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

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

113 2. The local agency will finance costs of the utility
114 project, and the costs associated with the financing will be
115 paid from utility project property, including the utility
116 project charge for the utility cost containment bonds.

117 3. Based on the best information available to the governing
118 body, the rates charged to the local agency's retail customers
119 by the publicly owned utility, including the utility project
120 charge resulting from the financing of the utility project with
121 utility cost containment bonds, are expected to be lower than
122 the rates that would be charged if the project were financed
123 with bonds payable from revenues of the publicly owned utility.

124 (c) A determination by the governing body that a project to
125 be financed with utility cost containment bonds is a utility
126 project is final and conclusive, and the utility cost



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127 containment bonds issued to finance the utility project and the
128 utility project charge shall be valid and enforceable as set
129 forth in the financing resolution and the documents relating to
130 the utility cost containment bonds.

131 (d) If a local agency that has outstanding utility cost
132 containment bonds ceases to operate a water or wastewater
133 utility, directly or through its publicly owned utility,
134 references in this section to the local agency or to its
135 publicly owned utility shall be to the successor entity. The
136 successor entity shall assume and perform all obligations of the
137 local agency and its publicly owned utility required by this
138 section and shall assume the servicing agreement required under
139 subsection (4) while the utility cost containment bonds remain
140 outstanding.

141 (4) FINANCING UTILITY PROJECTS.—

142 (a) An authority may issue utility cost containment bonds
143 to finance or refinance utility projects; refinance debt of a
144 local agency incurred in financing or refinancing utility
145 projects, provided such refinancing results in present value
146 savings to the local agency; or, with the approval of the local
147 agency, refinance previously issued utility cost containment
148 bonds.

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

150 a. Form a single-purpose limited liability company and
151 authorize the company to adopt the financing resolution of such
152 utility project; or

153 b. Create a new single-purpose entity by interlocal
154 agreement under s. 163.01, Florida Statutes, the membership of
155 which shall consist of the authority and two or more of its



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156 members or other public agencies.

157 2. A single-purpose limited liability company or a single-
158 purpose entity may be created by the authority solely for the
159 purpose of performing the duties and responsibilities of the
160 authority specified in this section and shall constitute an
161 authority for all purposes of this section. Reference to the
162 authority includes a company or entity created under this
163 paragraph.

164 (b) The governing body of an authority that is financing
165 the costs of a utility project shall adopt a financing
166 resolution and shall impose a utility project charge as
167 described in subsection (5). All provisions of a financing
168 resolution adopted pursuant to this section are binding on the
169 authority.

170 1. The financing resolution must:

171 a. Provide a brief description of the financial calculation
172 method the authority will use in determining the utility project
173 charge. The calculation method shall include a periodic
174 adjustment methodology to be applied at least annually to the
175 utility project charge. The authority shall establish the
176 allocation of the utility project charge among classes of
177 customers of the publicly owned utility. The decision of the
178 authority shall be final and conclusive, and the method of
179 calculating the utility project charge and the periodic
180 adjustment may not be changed;

181 b. Require each customer in the class or classes of
182 customers specified in the financing resolution who receives
183 water or wastewater service through the publicly owned utility
184 to pay the utility project charge regardless of whether the



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185 customer has an agreement to receive water or wastewater service
186 from a person other than the publicly owned utility;

187 c. Require that the utility project charge be charged
188 separately from other charges on the bill of customers of the
189 publicly owned utility in the class or classes of customers
190 specified in the financing resolution; and

191 d. Require that the authority enter into a servicing
192 agreement with the local agency or its publicly owned utility to
193 collect the utility project charge.

194 2. The authority may require in the financing resolution
195 that, in the event of a default by the local agency or its
196 publicly owned utility with respect to revenues from the utility
197 project property, the authority, upon application by the
198 beneficiaries of the statutory lien as set forth in subsection
199 (6), shall order the sequestration and payment to the
200 beneficiaries of revenues arising from utility project property.
201 This subparagraph does not limit any other remedies available to
202 the beneficiaries by reason of default.

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

205 (d) Each authority shall work with local agencies that
206 request assistance to determine the most cost-effective manner
207 of financing regional water projects. If the entities determine
208 that the issuance of utility cost containment bonds will result
209 in lower financing costs for a project, the authority shall
210 cooperate with such local agencies and, if requested by the
211 local agencies, issue utility cost containment bonds as provided
212 in this section.

213 (5) UTILITY PROJECT CHARGE.-



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214 (a) The authority shall impose a sufficient utility project
215 charge, based on estimates of water or wastewater service usage,
216 to ensure timely payment of all financing costs with respect to
217 utility cost containment bonds. The local agency or its publicly
218 owned utility shall provide the authority with information
219 concerning the publicly owned utility which may be required by
220 the authority in establishing the utility project charge.

221 (b) The utility project charge is a nonbypassable charge to
222 all present and future customers of the publicly owned utility
223 in the class or classes of customers specified in the financing
224 resolution upon its adoption. If a customer of a publicly owned
225 utility that is subject to a utility project charge enters into
226 an agreement to purchase water or wastewater service from a
227 supplier other than the publicly owned utility, the customer
228 remains liable for the payment of the utility project charge if
229 the customer has received any service or benefit from the
230 publicly owned utility after the date the utility project charge
231 was imposed.

232 (c) The authority shall determine at least annually and at
233 such additional intervals as provided in the financing
234 resolution and documents related to the applicable utility cost
235 containment bonds whether adjustments to the utility project
236 charge are required. The authority shall use the adjustment to
237 correct for any overcollection or undercollection of financing
238 costs from the utility project charge or to make any other
239 adjustment necessary to ensure the timely payment of the
240 financing costs of the utility cost containment bonds, including
241 adjustment of the utility project charge to pay any debt service
242 coverage requirement for the utility cost containment bonds. The



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243 local agency or its publicly owned utility shall provide the
244 authority with information concerning the publicly owned utility
245 which may be required by the authority in adjusting the utility
246 project charge.

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

250 2. The adjustment may not impose the utility project charge
251 on a class of customers that was not subject to the utility
252 project charge pursuant to the financing resolution imposing the
253 utility project charge.

254 (d) Revenues from a utility project charge are special
255 revenues of the authority and do not constitute revenue of the
256 local agency or its publicly owned utility for any purpose,
257 including any dedication, commitment, or pledge of revenue,
258 receipts, or other income that the local agency or its publicly
259 owned utility has made or will make for the security of any of
260 its obligations.

261 (e) The local agency or its publicly owned utility shall
262 act as a servicing agent for collecting the utility project
263 charge throughout the duration of the servicing agreement
264 required by the financing resolution. The local agency or its
265 publicly owned utility shall hold the money collected in trust
266 for the exclusive benefit of the persons entitled to have the
267 financing costs paid from the utility project charge, and the
268 money does not lose its designation as revenues of the authority
269 by virtue of possession by the local agency or its publicly
270 owned utility.

271 (f) The customer must make timely and complete payment of



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272 all utility project charges as a condition of receiving water or
273 wastewater service from the publicly owned