

By the Committees on Appropriations; and Communications, Energy, and Public Utilities; 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 a successor entity
8 of a local agency to assume and perform the
9 obligations of the local agency with respect to the
10 financing of a utility project; providing procedures
11 for local agencies to use when applying to finance a
12 utility project using utility cost containment bonds;
13 authorizing an authority to issue utility cost
14 containment bonds for specified purposes related to
15 utility projects; authorizing an authority to form
16 alternate entities to finance utility projects;
17 requiring the governing body of the authority to adopt
18 a financing resolution and impose a utility project
19 charge on customers of a publicly owned utility as a
20 condition of utility project financing; specifying
21 required and optional provisions of the financing
22 resolution; specifying powers of the authority;
23 requiring the local agency or its publicly owned
24 utility to assist the authority in the establishment
25 or adjustment of the utility project charge; requiring
26 that customers of the public utility specified in the
27 financing resolution pay the utility project charge;
28 providing for adjustment of the utility project
29 charge; establishing ownership of the revenues of the

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

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59 certain circumstances; 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 under s.
73 163.01(7)(g), Florida Statutes, that 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 section, means:

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

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

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88 3. Finance charges;

89 4. Interest, as determined by the authority;

90 5. Provisions for working capital and debt service
91 reserves;

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

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

97 8. Any other expenses necessary or incidental to
98 determining the feasibility of constructing a utility project or
99 incidental to the construction, acquisition, or financing of a
100 utility project.

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

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

104 (e) "Financing cost" means:

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; contract, agreement, or other credit
116 or liquidity enhancement for bonds; or contract, agreement, or

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117 other financial agreement entered into in connection with
118 utility cost containment bonds;

119 5. Any coverage charges; or

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

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

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

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

137 (i) "Public utility services" means water or wastewater
138 services provided by a publicly owned utility. The term does not
139 include communications services, as defined in s. 202.11,
140 Florida Statutes, Internet access services, or information
141 services.

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

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

149 1. Bond purchase agreements;

150 2. Bonds acquired by the authority;

151 3. Installment sales agreements and other revenue-producing
152 agreements entered into by the authority;

153 4. Utility projects financed or refinanced by the
154 authority;

155 5. Grants and other sources of income;

156 6. Moneys paid by a local agency;

157 7. Interlocal agreements with a local agency, including all
158 service agreements; or

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

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

170 (m) "Utility project" means the acquisition, construction,
171 installation, retrofitting, rebuilding, or other addition to or
172 improvement of any equipment, device, structure, process,
173 facility, technology, rights, or property located within or
174 outside this state which is used in connection with the

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175 operations of a publicly owned utility.

176 (n) "Utility project charge" means a charge levied on
177 customers of a publicly owned utility to pay the financing costs
178 of utility cost containment bonds issued under subsection (4).
179 The term includes any adjustments to the utility project charge
180 under subsection (5).

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

186 1. The financing resolution, the utility project charge,
187 and any adjustment to the utility project charge established in
188 accordance with subsection (5);

189 2. The financing costs of the utility cost containment
190 bonds and all revenues, and all collections, claims, payments,
191 moneys, or proceeds for, or arising from, the utility project
192 charge; or

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

195 (3) UTILITY PROJECTS.—

196 (a) A local agency that owns and operates a publicly owned
197 utility may apply to an authority to finance the costs of a
198 utility project using the proceeds of utility cost containment
199 bonds. In its application to the authority, the local agency
200 shall specify the utility project to be financed by the utility
201 cost containment bonds and the maximum principal amount, the
202 maximum interest rate, and the maximum stated terms of the
203 utility cost containment bonds.

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

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

209 2. The local agency will finance costs of the utility
210 project, and the costs associated with the financing will be
211 paid from utility project property, including the utility
212 project charge for the utility cost containment bonds.

213 3. Based on the best information available to the governing
214 body, the rates charged to the local agency's retail customers
215 by the publicly owned utility, including the utility project
216 charge resulting from the financing of the utility project with
217 utility cost containment bonds, are expected to be lower than
218 the rates that would be charged if the project were financed
219 with bonds payable from revenues of the publicly owned utility.

220 (c) A determination by the governing body that a project to
221 be financed with utility cost containment bonds is a utility
222 project is final and conclusive, and the utility cost
223 containment bonds issued to finance the utility project and the
224 utility project charge shall be valid and enforceable as set
225 forth in the financing resolution and the documents relating to
226 the utility cost containment bonds.

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

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233 local agency and its publicly owned utility required by this
234 section and shall assume the servicing agreement required under
235 subsection (4) while the utility cost containment bonds remain
236 outstanding.

237 (4) FINANCING UTILITY PROJECTS.—

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

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

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

249 b. Create a new single-purpose entity by interlocal
250 agreement under s. 163.01, Florida Statutes, the membership of
251 which shall consist of the authority and two or more of its
252 members or other public agencies.

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

260 (b) The governing body of an authority that is financing
261 the costs of a utility project shall adopt a financing

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262 resolution and shall impose a utility project charge as
263 described in subsection (5). All provisions of a financing
264 resolution adopted pursuant to this section are binding on the
265 authority.

266 1. The financing resolution must:

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

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

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

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

290 2. The authority may require in the financing resolution

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291 that, in the event of a default by the local agency or its
292 publicly owned utility with respect to revenues from the utility
293 project property, the authority, upon application by the
294 beneficiaries of the statutory lien as set forth in subsection
295 (6), shall order the sequestration and payment to the
296 beneficiaries of revenues arising from utility project property.
297 This subparagraph does not limit any other remedies available to
298 the beneficiaries by reason of default.

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

301 (d) Each authority shall work with local agencies that
302 request assistance to determine the most cost-effective manner
303 of financing regional water projects. If the entities determine
304 that the issuance of utility cost containment bonds will result
305 in lower financing costs for a project, the authority shall
306 cooperate with such local agencies and, if requested by the
307 local agencies, issue utility cost containment bonds as provided
308 in this section.

309 (5) UTILITY PROJECT CHARGE.—

310 (a) The authority shall impose a sufficient utility project
311 charge, based on estimates of water or wastewater service usage,
312 to ensure timely payment of all financing costs with respect to
313 utility cost containment bonds. The local agency or its publicly
314 owned utility shall provide the authority with information
315 concerning the publicly owned utility which may be required by
316 the authority in establishing the utility project charge.

317 (b) The utility project charge is a nonbypassable charge to
318 all present and future customers of the publicly owned utility
319 in the class or classes of customers specified in the financing

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320 resolution upon its adoption. If the regulatory structure for
321 the water or wastewater industry changes in a manner that
322 authorizes a customer to choose to take service from an
323 alternative supplier and the customer chooses an alternative
324 supplier, the customer remains liable for paying the utility
325 project charge if the customer continues to receive any service
326 from the publicly owned utility for the transmission,
327 distribution, processing, delivery, or metering of the
328 underlying water or wastewater service.

329 (c) The authority shall determine at least annually and at
330 such additional intervals as provided in the financing
331 resolution and documents related to the applicable utility cost
332 containment bonds whether adjustments to the utility project
333 charge are required. The authority shall use the adjustment to
334 correct for any overcollection or undercollection of financing
335 costs from the utility project charge or to make any other
336 adjustment necessary to ensure the timely payment of the
337 financing costs of the utility cost containment bonds, including
338 adjustment of the utility project charge to pay any debt service
339 coverage requirement for the utility cost containment bonds. The
340 local agency or its publicly owned utility shall provide the
341 authority with information concerning the publicly owned utility
342 which may be required by the authority in adjusting the utility
343 project charge.

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

347 2. The adjustment may not impose the utility project charge
348 on a class of customers that was not subject to the utility

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349 project charge pursuant to the financing resolution imposing the
350 utility project charge.

351 (d) Revenues from a utility project charge are special
352 revenues of the authority and do not constitute revenue of the
353 local agency or its publicly owned utility for any purpose,
354 including any dedication, commitment, or pledge of revenue,
355 receipts, or other income that the local agency or its publicly
356 owned utility has made or will make for the security of any of
357 its obligations.

358 (e) The local agency or its publicly owned utility shall
359 act as a servicing agent for collecting the utility project
360 charge throughout the duration of the servicing agreement
361 required by the financing resolution. The local agency or its
362 publicly owned utility shall hold the money collected in trust
363 for the exclusive benefit of the persons entitled to have the
364 financing costs paid from the utility project charge, and the
365 money does not lose its designation as revenues of the authority
366 by virtue of possession by the local agency or its publicly
367 owned utility.

368 (f) The customer must make timely and complete payment of
369 all utility project charges as a condition of receiving water or
370 wastewater service from the publicly owned utility. The local
371 agency or its publicly owned utility may use its established
372 collection policies and remedies provided under law to enforce
373 collection of the utility project charge. A customer liable for
374 a utility project charge may not withhold payment, in whole or
375 in part, thereof.

376 (g) The pledge of a utility project charge to secure
377 payment of utility cost containment bonds is irrevocable, and

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378 the state, or any other entity, may not reduce, impair, or
379 otherwise adjust the utility project charge, except that the
380 authority shall implement the periodic adjustments to the
381 utility project charge as provided under this subsection.

382 (6) UTILITY PROJECT PROPERTY.—

383 (a) A utility project charge constitutes utility project
384 property on the effective date of the financing resolution
385 authorizing such utility project charge. Utility project
386 property constitutes property, including for contracts securing
387 utility cost containment bonds, regardless of whether the
388 revenues and proceeds arising with respect to the utility
389 project property have accrued. Utility project property shall
390 continuously exist as property for all purposes with all of the
391 rights and privileges of this section through the end of the
392 period provided in the financing resolution or until all
393 financing costs with respect to the related utility cost
394 containment bonds are paid in full, whichever occurs first.

395 (b) Upon the effective date of the financing resolution,
396 the utility project property is subject to a first-priority
397 statutory lien to secure the payment of the utility cost
398 containment bonds.

399 1. The lien secures the payment of all financing costs then
400 existing or subsequently arising to the holders of the utility
401 cost containment bonds, the trustees or representatives of the
402 holders of the utility cost containment bonds, and any other
403 entity specified in the financing resolution or the documents
404 relating to the utility cost containment bonds.

405 2. The lien attaches to the utility project property
406 regardless of the current ownership of the utility project

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407 property, including any local agency or its publicly owned
408 utility, the authority, or any other person.

409 3. Upon the effective date of the financing resolution, the
410 lien is valid and enforceable against the owner of the utility
411 project property and all third parties, and additional public
412 notice is not required.

413 4. The lien is a continuously perfected lien on all
414 revenues and proceeds generated from the utility project
415 property regardless of whether the revenues or proceeds have
416 accrued.

417 (c) All revenues with respect to utility project property
418 related to utility cost containment bonds, including payments of
419 the utility project charge, shall be applied first to the
420 payment of the financing costs of the utility cost containment
421 bonds then due, including the funding of reserves for the
422 utility cost containment bonds. Any excess revenues shall be
423 applied as determined by the authority for the benefit of the
424 utility for which the utility cost containment bonds were
425 issued.

426 (7) UTILITY COST CONTAINMENT BONDS.—

427 (a) Utility cost containment bonds shall be issued within
428 the parameters of the financing provided by the authority
429 pursuant to this section. The proceeds of the utility cost
430 containment bonds made available to the local agency or its
431 publicly owned utility shall be used for the utility project
432 identified in the application for financing of the utility
433 project or used to refinance indebtedness of the local agency
434 which financed or refinanced utility projects.

435 (b) Utility cost containment bonds shall be issued as set

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436 forth in this section and s. 163.01(7)(g)8., Florida Statutes,
437 and may be validated pursuant to s. 163.01(7)(g)9., Florida
438 Statutes.

439 (c) The authority shall pledge the utility project property
440 as security for the payment of the utility cost containment
441 bonds. All rights of an authority with respect to utility
442 project property pledged as security for the payment of utility
443 cost containment bonds shall be for the benefit of, and
444 enforceable by, the beneficiaries of the pledge to the extent
445 provided in the financing documents relating to the utility cost
446 containment bonds.

447 1. If utility project property is pledged as security for
448 the payment of utility cost containment bonds, the local agency
449 or its publicly owned utility shall enter into a contract with
450 the authority which requires, at a minimum, that the publicly
451 owned utility:

452 a. Continue to operate its publicly owned utility,
453 including the utility project that is being financed or
454 refinanced;

455 b. Collect the utility project charge from customers for
456 the benefit and account of the authority and the beneficiaries
457 of the pledge of the utility project charge; and

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

460 2. The pledge of a utility project charge to secure payment
461 of utility cost containment bonds is irrevocable, and the state
462 or any other entity may not reduce, impair, or otherwise adjust
463 the utility project charge, except that the authority shall
464 implement periodic adjustments to the utility project charge as

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465 provided under subsection (5).

466 (d) Utility cost containment bonds shall be nonrecourse to
467 the credit or any assets of the local agency or the publicly
468 owned utility but shall be payable from, and secured by a pledge
469 of the utility project property relating to the utility cost
470 containment bonds and any additional security or credit
471 enhancement specified in the documents relating to the utility
472 cost containment bonds. If, pursuant to subsection (4), the
473 authority is financing the project through a single-purpose
474 limited liability company, the utility cost containment bonds
475 shall be payable from, and secured by, a pledge of amounts paid
476 by the company to the authority from the applicable utility
477 project property. This paragraph shall be the exclusive method
478 of perfecting a pledge of utility project property by the
479 company securing the payment of financing costs under any
480 agreement of the company in connection with the issuance of
481 utility cost containment bonds.

482 (e) The issuance of utility cost containment bonds does not
483 obligate the state or any political subdivision thereof to levy
484 or to pledge any form of taxation to pay the utility cost
485 containment bonds or to make any appropriation for their
486 payment. Each utility cost containment bond must contain on its
487 face a statement in substantially the following form:

488
489 "Neither the full faith and credit nor the taxing power of the
490 State of Florida or any political subdivision thereof is pledged
491 to the payment of the principal of, or interest on, this bond."

492
493 (f) Notwithstanding any other law or this section, a

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494 financing resolution or other resolution of the authority, or
495 documents relating to utility cost containment bonds, the
496 authority may not rescind, alter, or amend any resolution or
497 document that pledges utility cost charges for payment of
498 utility cost containment bonds.

499 (g) Subject to the terms of any pledge document created
500 under this section, the validity and relative priority of a
501 pledge is not defeated or adversely affected by the commingling
502 of revenues generated by the utility project property with other
503 funds of the local agency or the publicly owned utility
504 collecting a utility project charge on behalf of an authority.

505 (h) Financing costs in connection with utility cost
506 containment bonds are a special obligation of the authority and
507 do not constitute a liability of the state or any political
508 subdivision thereof. Financing costs are not a pledge of the
509 full faith and credit of the state or any political subdivision
510 thereof, including the authority, but are payable solely from
511 the funds identified in the documents relating to the utility
512 cost containment bonds. This paragraph does not preclude
513 guarantees or credit enhancements in connection with utility
514 cost containment bonds.

515 (i) Except as otherwise provided in this section with
516 respect to adjustments to a utility project charge, the recovery
517 of the financing costs for the utility cost containment bonds
518 from the utility project charge shall be irrevocable, and the
519 authority does not have the power, by rescinding, altering, or
520 amending the applicable financing resolution, to revalue or
521 revise for ratemaking purposes the financing costs of utility
522 cost containment bonds; to determine that the financing costs

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523 for the related utility cost containment bonds or the utility
524 project charge is unjust or unreasonable; or to in any way
525 reduce or impair the value of utility project property that
526 includes the utility project charge, either directly or
527 indirectly. The amount of revenues arising with respect to the
528 financing costs for the related utility cost containment bonds
529 or the utility project charge are not subject to reduction,
530 impairment, postponement, or termination for any reason until
531 all financing costs to be paid from the utility project charge
532 are fully met and discharged.

533 (j) Except as provided in subsection (5) with respect to
534 adjustments to a utility project charge, the state pledges and
535 agrees with the owners of utility cost containment bonds that
536 the state may not limit or alter the financing costs or the
537 utility project property, including the utility project charge,
538 relating to the utility cost containment bonds, or any rights
539 related to the utility project property, until all financing
540 costs with respect to the utility cost containment bonds are
541 fully met and discharged. This paragraph does not preclude
542 limitation or alteration if adequate provision is made by law to
543 protect the owners. The authority may include the state's pledge
544 in the governing documents for utility cost containment bonds.

545 (8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other
546 law, an authority that issued utility cost containment bonds may
547 not, and a governmental officer or organization may not
548 authorize the authority to, become a debtor under the United
549 States Bankruptcy Code or become the subject of any similar case
550 or proceeding under any other state or federal law if any
551 payment obligation from utility project property remains with

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552 respect to the utility cost containment bonds.

553 (9) CONSTRUCTION.—This section and all grants of power and
554 authority in this section shall be liberally construed to
555 effectuate their purposes. All incidental powers necessary to
556 carry this section into effect are expressly granted to, and
557 conferred upon, public entities.

558 Section 2. This act shall take effect July 1, 2015.