

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
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
 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
 78 of 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;

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, wastewater,
 102 or stormwater service from a publicly owned utility.

103 (d) "Financing cost" means:

104 1. Interest and redemption premiums that are payable on

105 utility cost containment bonds;

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

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

113 4. A payment or expense associated with a bond insurance
114 policy; financial guaranty; contract, agreement, or other credit
115 or liquidity enhancement for bonds; or contract, agreement, or
116 other financial agreement entered into in connection with
117 utility cost containment bonds;

118 5. Any coverage charges; or

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

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

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, wastewater, or
138 stormwater services provided by a publicly owned utility. The
139 term does not include Internet or cable services.

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

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

- 147 1. Bond purchase agreements;
- 148 2. Bonds acquired by the authority;
- 149 3. Installment sales agreements and other revenue-
150 producing agreements entered into by the authority;
- 151 4. Utility projects financed or refinanced by the
152 authority;
- 153 5. Grants and other sources of income;
- 154 6. Moneys paid by a local agency;
- 155 7. Interlocal agreements with a local agency, including
156 all service agreements; or

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

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

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

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

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

182 1. The financing resolution, the utility project charge,

183 and any adjustment to the utility project charge established in
 184 accordance with subsection (5);

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

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

191 (3) UTILITY PROJECTS.-

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

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

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

205 2. The local agency will finance costs of the utility
 206 project, and the costs associated with the financing will be
 207 paid from utility project property, including the utility
 208 project charge for the utility cost containment bonds.

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

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

224 (d) If a local agency that has outstanding utility cost
225 containment bonds ceases to operate a water, wastewater, or
226 stormwater utility, directly or through its publicly owned
227 utility, references in this section to the local agency or to
228 its publicly owned utility shall be to the successor entity. The
229 successor entity shall assume and perform all obligations of the
230 local agency and its publicly owned utility required by this
231 section and shall assume the servicing agreement required under
232 subsection (4) while the utility cost containment bonds remain
233 outstanding.

234 (4) FINANCING UTILITY PROJECTS.—

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

242 1. To finance a utility project, the authority may:
243 a. Form a single-purpose limited liability company and
244 authorize the company to adopt the financing resolution of such
245 utility project; or

246 b. Create a new single-purpose entity by interlocal
247 agreement under s. 163.01, Florida Statutes, the membership of
248 which shall consist of the authority and two or more of its
249 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
 262 authority.

263 1. The financing resolution must:

264 a. Provide a brief description of the financial
 265 calculation method the authority will use in determining the
 266 utility project charge. The calculation method shall include a
 267 periodic adjustment methodology to be applied at least annually
 268 to the 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
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 subparagraph 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 s. 163.01(7)(g), Florida Statutes.

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

307 (5) UTILITY PROJECT CHARGE.—

308 (a) The authority shall impose a sufficient utility
309 project charge, based on estimates of water, wastewater, or
310 stormwater service usage, to ensure timely payment of all
311 financing costs with respect to utility cost containment bonds.
312 The local agency or its publicly owned utility shall provide the

313 authority with information concerning the publicly owned utility
314 which may be required by the authority in establishing the
315 utility project charge.

316 (b) The utility project charge is a nonbypassable charge
317 to all present and future customers of the publicly owned
318 utility in the class or classes of customers specified in the
319 financing resolution upon its adoption. If a customer of a
320 publicly owned utility that is subject to a utility project
321 charge enters into an agreement to purchase water, wastewater,
322 or stormwater service from a supplier other than the publicly
323 owned utility, the customer remains liable for the payment of
324 the utility project charge if the customer has received any
325 service or benefit from the publicly owned utility after the
326 date the utility project charge was imposed.

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

339 authority with information concerning the publicly owned utility
340 which may be required by the authority in adjusting the utility
341 project charge.

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

345 2. The adjustment may not impose the utility project
346 charge on a class of customers that was not subject to the
347 utility project charge pursuant to the financing resolution
348 imposing the utility project charge.

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

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

365 owned utility.

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

374 (g) The pledge of a utility project charge to secure
375 payment of utility cost containment bonds is irrevocable, and
376 the state, or any other entity, may not reduce, impair, or
377 otherwise adjust the utility project charge, except that the
378 authority shall implement the periodic adjustments to the
379 utility project charge as provided under this subsection.

380 (6) UTILITY PROJECT PROPERTY.—

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

391 financing costs with respect to the related utility cost
392 containment bonds are paid in full, whichever occurs first.

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

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

403 2. The lien attaches to the utility project property
404 regardless of the current ownership of the utility project
405 property, including any local agency or its publicly owned
406 utility, the authority, or any other person.

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

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

415 (c) All revenues with respect to utility project property
416 related to utility cost containment bonds, including payments of

417 the utility project charge, shall be applied first to the
418 payment of the financing costs of the utility cost containment
419 bonds then due, including the funding of reserves for the
420 utility cost containment bonds. Any excess revenues shall be
421 applied as determined by the authority for the benefit of the
422 utility for which the utility cost containment bonds were
423 issued.

424 (7) UTILITY COST CONTAINMENT BONDS.—

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

433 (b) Utility cost containment bonds shall be issued as set
434 forth in this section and s. 163.01(7)(g)8., Florida Statutes,
435 and may be validated pursuant to s. 163.01(7)(g)9., Florida
436 Statutes.

437 (c) The authority shall pledge the utility project
438 property as security for the payment of the utility cost
439 containment bonds. All rights of an authority with respect to
440 utility project property pledged as security for the payment of
441 utility cost containment bonds shall be for the benefit of, and
442 enforceable by, the beneficiaries of the pledge to the extent

443 provided in the financing documents relating to the utility cost
444 containment bonds.

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

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

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

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

458 2. The pledge of a utility project charge to secure
459 payment of utility cost containment bonds is irrevocable, and
460 the state or any other entity may not reduce, impair, or
461 otherwise adjust the utility project charge, except that the
462 authority shall implement periodic adjustments to the utility
463 project charge as provided under subsection (5).

464 (d) Utility cost containment bonds shall be nonrecourse to
465 the credit or any assets of the local agency or the publicly
466 owned utility but shall be payable from, and secured by a pledge
467 of the utility project property relating to the utility cost
468 containment bonds and any additional security or credit

469 enhancement specified in the documents relating to the utility
470 cost containment bonds. If, pursuant to subsection (4), the
471 authority is financing the project through a single-purpose
472 limited liability company, the utility cost containment bonds
473 shall be payable from, and secured by, a pledge of amounts paid
474 by the company to the authority from the applicable utility
475 project property. This paragraph shall be the exclusive method
476 of perfecting a pledge of utility project property by the
477 company securing the payment of financing costs under any
478 agreement of the company in connection with the issuance of
479 utility cost containment bonds.

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

486
487 "Neither the full faith and credit nor the taxing power of the
488 State of Florida or any political subdivision thereof is pledged
489 to the payment of the principal of, or interest on, this bond."

490
491 (f) Notwithstanding any other law or this section, a
492 financing resolution or other resolution of the authority, or
493 documents relating to utility cost containment bonds, the
494 authority may not rescind, alter, or amend any resolution or

495 document that pledges utility cost charges for payment of
496 utility cost containment bonds.

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

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

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

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

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

543 (8) LIMITATION ON DEBT RELIEF.—Notwithstanding any other
544 law, an authority that issued utility cost containment bonds may
545 not, and a governmental officer or organization may not
546 authorize the authority to, become a debtor under the United

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

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

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