

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 or
 102 wastewater 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
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.

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-
152 producing 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
158 all service agreements; or

159 8. Interest or other income from any investment of money
160 in 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
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.

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

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

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

235 section and shall assume the servicing agreement required under
236 subsection (4) while the utility cost containment bonds remain
237 outstanding.

238 (4) FINANCING UTILITY PROJECTS.—

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

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

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

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

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

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

267 1. The financing resolution must:

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

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

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

287 specified in the financing resolution; and

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

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

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

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

310 (5) UTILITY PROJECT CHARGE.—

311 (a) The authority shall impose a sufficient utility
312 project charge, based on estimates of water or wastewater

313 service usage, to ensure timely payment of all financing costs
314 with respect to utility cost containment bonds. The local agency
315 or its publicly owned utility shall provide the authority with
316 information concerning the publicly owned utility which may be
317 required by the authority in establishing the utility project
318 charge.

319 (b) The utility project charge is a nonbypassable charge
320 to all present and future customers of the publicly owned
321 utility in the class or classes of customers specified in the
322 financing resolution upon its adoption. If the regulatory
323 structure for the water or wastewater industry changes so that a
324 customer may choose to receive service from an alternative
325 supplier and the customer chooses an alternative supplier, the
326 customer remains liable to pay the utility project charge if the
327 customer continues to receive any service from the publicly
328 owned utility for the transmission, distribution, processing,
329 delivery, or metering of the underlying water or wastewater
330 service.

331 (c) The authority shall determine at least annually and at
332 such additional intervals as provided in the financing
333 resolution and documents related to the applicable utility cost
334 containment bonds whether adjustments to the utility project
335 charge are required. The authority shall use the adjustment to
336 correct for any overcollection or undercollection of financing
337 costs from the utility project charge or to make any other
338 adjustment necessary to ensure the timely payment of the

339 financing costs of the utility cost containment bonds, including
340 adjustment of the utility project charge to pay any debt service
341 coverage requirement for the utility cost containment bonds. The
342 local agency or its publicly owned utility shall provide the
343 authority with information concerning the publicly owned utility
344 which may be required by the authority in adjusting the utility
345 project charge.

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

349 2. The adjustment may not impose the utility project
350 charge on a class of customers that was not subject to the
351 utility project charge pursuant to the financing resolution
352 imposing the utility project charge.

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

360 (e) The local agency or its publicly owned utility shall
361 act as a servicing agent for collecting the utility project
362 charge throughout the duration of the servicing agreement
363 required by the financing resolution. The local agency or its
364 publicly owned utility shall hold the money collected in trust

365 for the exclusive benefit of the persons entitled to have the
366 financing costs paid from the utility project charge, and the
367 money does not lose its designation as revenues of the authority
368 by virtue of possession by the local agency or its publicly
369 owned utility.

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

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

384 (6) UTILITY PROJECT PROPERTY.—

385 (a) A utility project charge constitutes utility project
386 property on the effective date of the financing resolution
387 authorizing such utility project charge. Utility project
388 property constitutes property, including for contracts securing
389 utility cost containment bonds, regardless of whether the
390 revenues and proceeds arising with respect to the utility

391 project property have accrued. Utility project property shall
392 continuously exist as property for all purposes with all of the
393 rights and privileges of this section through the end of the
394 period provided in the financing resolution or until all
395 financing costs with respect to the related utility cost
396 containment bonds are paid in full, whichever occurs first.

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

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

407 2. The lien attaches to the utility project property
408 regardless of the current ownership of the utility project
409 property, including any local agency or its publicly owned
410 utility, the authority, or any other person.

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

415 4. The lien is a continuously perfected lien on all
416 revenues and proceeds generated from the utility project

417 property regardless of whether the revenues or proceeds have
418 accrued.

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

428 (7) UTILITY COST CONTAINMENT BONDS.—

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

437 (b) Utility cost containment bonds shall be issued as set
438 forth in this section and s. 163.01(7)(g)8., Florida Statutes,
439 and may be validated pursuant to s. 163.01(7)(g)9., Florida
440 Statutes.

441 (c) The authority shall pledge the utility project
442 property as security for the payment of the utility cost

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

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

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

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

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

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

468 (d) Utility cost containment bonds shall be nonrecourse to

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

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

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

494

495 (f) Notwithstanding any other law or this section, a
496 financing resolution or other resolution of the authority, or
497 documents relating to utility cost containment bonds, the
498 authority may not rescind, alter, or amend any resolution or
499 document that pledges utility cost charges for payment of
500 utility cost containment bonds.

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

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

517 (i) Except as otherwise provided in this section with
518 respect to adjustments to a utility project charge, the recovery
519 of the financing costs for the utility cost containment bonds
520 from the utility project charge shall be irrevocable, and the

521 authority does not have the power, by rescinding, altering, or
522 amending the applicable financing resolution, to revalue or
523 revise for ratemaking purposes the financing costs of utility
524 cost containment bonds; to determine that the financing costs
525 for the related utility cost containment bonds or the utility
526 project charge is unjust or unreasonable; or to in any way
527 reduce or impair the value of utility project property that
528 includes the utility project charge, either directly or
529 indirectly. The amount of revenues arising with respect to the
530 financing costs for the related utility cost containment bonds
531 or the utility project charge are not subject to reduction,
532 impairment, postponement, or termination for any reason until
533 all financing costs to be paid from the utility project charge
534 are fully met and discharged.

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

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

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

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