

## CHAPTER 2016-124

### Committee Substitute for House Bill No. 347

An act relating to utility projects; providing a short title; defining terms; authorizing certain local governmental entities to finance the costs of a utility project by issuing utility cost containment bonds upon application by a local agency; specifying application requirements; requiring a successor entity of a local agency to assume and perform the obligations of the local agency with respect to the financing of a utility project; providing procedures for local agencies to use when applying to finance a utility project using utility cost containment bonds; authorizing an authority to issue utility cost containment bonds for specified purposes related to utility projects; authorizing an authority to form alternate entities to finance utility projects; requiring the governing body of the authority to adopt a financing resolution and impose a utility project charge on customers of a publicly owned utility as a condition of utility project financing; specifying required and optional provisions of the financing resolution; specifying powers of the authority; requiring the local agency or its publicly owned utility to assist the authority in the establishment or adjustment of the utility project charge; requiring that customers of the public utility specified in the financing resolution pay the utility project charge; providing for adjustment of the utility project charge; establishing ownership of the revenues of the utility project charge; requiring the local agency or its publicly owned utility to collect the utility project charge; conditioning a customer's receipt of public utility services on payment of the utility project charge; authorizing a local agency or its publicly owned utility to use available remedies to enforce collection of the utility project charge; providing that the pledge of the utility project charge to secure payment of bonds issued to finance the utility project is irrevocable and cannot be reduced or impaired except under certain conditions; providing that a utility project charge constitutes utility project property; providing that utility project property is subject to a lien to secure payment of costs relating to utility cost containment bonds; establishing payment priorities for the use of revenues of the utility project property; providing for the issuance and validation of utility cost containment bonds; securing the payment of utility cost containment bonds and related costs; providing that utility cost containment bonds do not obligate the state or any political subdivision and are not backed by their full faith and credit and taxing power; requiring that certain disclosures be printed on utility cost containment bonds; providing that financing costs related to utility cost containment bonds are an obligation of the authority only; providing limitations on the state's ability to alter financing costs or utility project property under certain circumstances; prohibiting an authority with outstanding payment obligations on utility cost containment bonds from becoming a debtor under certain federal or state laws; providing for construction; endowing public entities with certain powers; providing an effective date.

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

Section 1. Utility Cost Containment Bond Act.—

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

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

(a) “Authority” means:

- 1. A legal entity created under s. 163.01(7)(g), Florida Statutes; or
- 2. A legal entity created under s. 163.01, Florida Statutes, composed of at least two of the following:
  - a. A public agency that provides retail water or wastewater services in two or more counties;
  - b. A municipality; or
  - c. A county.

The authority or at least one member of the authority must provide retail water or wastewater services to at least 75,000 customers.

(b) “Cost,” as applied to a utility project or a portion of a utility project financed under this section, means:

- 1. Any part of the expense of constructing, renovating, or acquiring lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a utility project;
- 2. The expense of demolishing or removing any buildings or structures on acquired land, including the expense of acquiring any lands to which the buildings or structures may be moved, and the cost of all machinery and equipment used for the demolition or removal;
- 3. Finance charges;
- 4. Interest, as determined by the authority;
- 5. Provisions for working capital and debt service reserves;
- 6. Expenses for extensions, enlargements, additions, replacements, renovations, and improvements;
- 7. Expenses for architectural, engineering, financial, accounting, and legal services, plans, specifications, estimates, and administration; or
- 8. Any other expenses necessary or incidental to determining the feasibility of constructing a utility project or incidental to the construction, acquisition, or financing of a utility project.

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

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

(e) "Financing cost" means:

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

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

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

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

5. Any coverage charges; or

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

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

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

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

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

(j) "Publicly owned utility" means a utility providing retail or wholesale water or wastewater services which is owned and operated by a local agency.

The term includes any successor to the powers and functions of such a utility.

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

1. Bond purchase agreements;
2. Bonds acquired by the authority;
3. Installment sales agreements and other revenue-producing agreements entered into by the authority;
4. Utility projects financed or refinanced by the authority;
5. Grants and other sources of income;
6. Moneys paid by a local agency;
7. Interlocal agreements with a local agency, including all service agreements; or
8. Interest or other income from any investment of money in any fund or account established for the payment of principal, interest, or premiums on utility cost containment bonds, or the deposit of proceeds of utility cost containment bonds.

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

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

(n) “Utility project charge” means a charge levied on customers of a publicly owned utility to pay the financing costs of utility cost containment bonds issued under subsection (4). The term includes any adjustments to the utility project charge made under subsection (5).

(o) “Utility project property” means the property right created pursuant to subsection (6). The term does not include any interest in a customer’s real or personal property but includes the right, title, and interest of an authority in any of the following:

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

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

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

(3) UTILITY PROJECTS.—

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

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

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

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

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

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

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

(e) If a local agency that has outstanding utility cost containment bonds ceases to operate a water or wastewater utility, directly or through its

publicly owned utility, references in this section to the local agency or to its publicly owned utility must be to the successor entity. The successor entity shall assume and perform all obligations of the local agency and its publicly owned utility required by this section and shall assume the servicing agreement required under subsection (4) while the utility cost containment bonds remain outstanding.

(4) FINANCING UTILITY PROJECTS.—

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

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

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

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

2. A single-purpose limited liability company or a single-purpose entity may be created by the authority solely for the purpose of performing the duties and responsibilities of the authority specified in this section and constitutes an authority for all purposes of this section. Reference to the authority includes a company or entity created under this paragraph.

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

1. The financing resolution must:

a. Provide a brief description of the financial calculation method the authority will use in determining the utility project charge. The calculation method must include a periodic adjustment methodology to be applied at least annually to the utility project charge. The authority shall establish the allocation of the utility project charge among classes of customers of the publicly owned utility. The decision of the authority is final and conclusive, and the method of calculating the utility project charge and the periodic adjustment may not be changed;

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

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

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

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

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

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

(5) UTILITY PROJECT CHARGE.—

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

(b) The utility project charge is a nonbypassable charge to all present and future customers of the publicly owned utility in the class or classes of customers specified in the financing resolution upon its adoption. If the regulatory structure for the water or wastewater industry changes in a manner that authorizes a customer to choose to take service from an alternative supplier and the customer chooses an alternative supplier, the customer remains liable for paying the utility project charge if the customer continues to receive any service from the publicly owned utility for the transmission, distribution, processing, delivery, or metering of the underlying water or wastewater service.

(c) The authority shall determine at least annually and at such additional intervals as provided in the financing resolution and documents related to the applicable utility cost containment bonds whether adjustments to the utility project charge are required. The authority shall use the adjustment to correct for any overcollection or undercollection of financing

costs from the utility project charge or to make any other adjustment necessary to ensure the timely payment of the financing costs of the utility cost containment bonds, including adjustment of the utility project charge to pay any debt service coverage requirement for the utility cost containment bonds. The local agency or its publicly owned utility shall provide the authority with information concerning the publicly owned utility which may be required by the authority in adjusting the utility project charge.

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

2. The adjustment may not impose the utility project charge on a class of customers which was not subject to the utility project charge pursuant to the financing resolution imposing the utility project charge.

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

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

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

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

(6) UTILITY PROJECT PROPERTY.—

(a) A utility project charge constitutes utility project property on the effective date of the financing resolution authorizing such utility project charge. Utility project property constitutes property, including contracts for

securing utility cost containment bonds, regardless of whether the revenues and proceeds arising with respect to the utility project property have accrued. Utility project property shall continuously exist as property for all purposes with all of the rights and privileges of this section through the end of the period provided in the financing resolution or until all financing costs with respect to the related utility cost containment bonds are paid in full, whichever occurs first.

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

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

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

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

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

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

(7) UTILITY COST CONTAINMENT BONDS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(j) Except as provided in subsection (5) with respect to adjustments to a utility project charge, the state pledges and agrees with the owners of utility cost containment bonds that the state may not limit or alter the financing costs or the utility project property, including the utility project charge, relating to the utility cost containment bonds, or any rights related to the utility project property, until all financing costs with respect to the utility cost containment bonds are fully met and discharged. This paragraph does not preclude limitation or alteration if adequate provision is made by law to

protect the owners. The authority may include the state's pledge in the governing documents for utility cost containment bonds.

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

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

Section 2. This act shall take effect July 1, 2016.

Approved by the Governor March 25, 2016.

Filed in Office Secretary of State March 25, 2016.