

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

BILL: CS/SB 324

INTRODUCER: Finance and Tax Committee and Senator Legg and others

SUBJECT: Utility Projects

DATE: February 23, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.	Babin	Diez-Arguelles	FT	Fav/CS
3.	Wiehle	Caldwell	CU	Pre-meeting
4.			AP	

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 324 establishes a new mechanism - utility cost containment bonds - available to a utility authority to finance projects related to water or wastewater service on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity. Utility cost containment bonds are secured by a utility project charge levied on utility customers. The separate charge is designed to satisfy rating agency criteria to achieve a higher bond rating and, therefore, a lower interest rate and more favorable terms for bonds issued to fund eligible projects.

Briefly, the financing mechanism created by the bill operates as follows:

- A local agency applies to the authority to finance the costs of an eligible project using utility cost containment bonds.
- The authority adopts a financing resolution, setting forth certain requirements for issuance of the bonds.
- The bonds are secured by the revenues from a separate utility project charge stated on the bill of each present and future customer of the services specified in the financing resolution.
- The revenues from the charge are transferred to the authority and held in trust for the benefit of the bondholders.

The bill may reduce local government expenditures by reducing financing costs for water and waste water utility projects.

The bill amends ss. 153.03 and 367.072, F.S., to authorize a county to bring an eminent domain action upon the filing of a petition for revocation of a water utility's certificate of authorization for a water system and to revise the PSC remedies upon the filing of such a petition, deleting the existing standard that the PSC may revoke a certificate if it "finds that revocation is in the best interest of the customers" and deleting the option for the PSC to require a utility to correct the quality of water service issues.

The bill takes effect July 1, 2016.

II. Present Situation:

Financing Authority of Local Government Entities for Public Works Projects

Local governments are authorized under current law to issue bonds, revenue certificates, and other forms of indebtedness related to the provision of public works projects.

County Bonding

A county may issue water revenue bonds, sewer revenue bonds, or general obligation bonds to pay all or part of the cost to purchase, construct, improve, extend, enlarge, or reconstruct water supply systems or sewage disposal systems.¹ Water revenue bonds are payable solely from water service charges.² Sewer revenue bonds are payable solely from sewer service charges.³ Neither type of revenue bond pledges the property, credit, or general tax revenue of the county. General obligation bonds are payable from ad valorem taxes alone or from ad valorem taxes with an additional secured pledge of water service charges, sewer service charges, special assessments, or a combination of these sources.⁴ Issuance of general obligation bonds, as required by the State Constitution,⁵ requires approval by referendum, and a county is required to levy annually a special tax upon all taxable property within the county to pay the principle and interest as it becomes due.⁶ Counties may also create special water and sewer districts to serve unincorporated areas, and the district's board may issue revenue bonds to finance all or part of the cost of a water system, sewer system, or both. Such bonds are payable from the revenues derived from operation of the utility system as provided by law and the authorizing resolution of the district's board.⁷

Municipal Bonding

A municipality may issue revenue bonds, general obligation bonds, ad valorem bonds, or improvement bonds to finance capital expenditures made for a public purpose. Revenue bonds

¹ Section 153.03(1) and (2), F.S.

² Section 153.02(9), F.S.

³ Section 153.02(10), F.S.

⁴ Section 153.02(11), F.S.

⁵ Section 12, Article VII, of the State Constitution (providing that counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation only "to finance or refinance capital projects authorized by law and only when approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation.")

⁶ Section 153.07, F.S.

⁷ Section 153.63(1), F.S. Such bonds may also be secured by the pledge of special assessments or the full faith and credit of the district.

are payable from sources other than ad valorem taxes and are not secured by a pledge of the property, credit, or general tax revenue of the municipality.⁸ General obligation bonds are payable from any special taxes levied for the purpose of repayment and any other sources as provided by the authorizing ordinance or resolution.⁹ Such bonds are secured by the full faith and credit and taxing power of the municipality and may require approval by referendum. Ad valorem bonds are payable from the proceeds of ad valorem taxes and require approval by referendum.¹⁰ Improvement bonds are special obligations payable solely from the proceeds of special assessments levied for a project.¹¹

Further, a municipality may issue mortgage revenue certificates or debentures to acquire, construct, or extend public works, including, among other things, water and alternative water supply facilities, sewage collection and disposal facilities, gas plants and distribution systems, and stormwater projects.¹² These instruments constitute a lien only against the property and revenue of the utility. These instruments may not impose any tax liability upon any real or personal property in the municipality and may not constitute a debt against the issuing municipality.¹³

The Division of Bond Finance (DBF) of the State Board of Administration provides information to, and collects information from, units of local government¹⁴ concerning the issuance of bonds by such entities.¹⁵ Each unit of local government must provide the DBF a complete description of its new general obligation bonds and revenue bonds and must provide advance notice of the impending sale of a new issue of bonds.¹⁶ According to the DBF, a public utility generally finances projects with revenue bonds, securing the debt with a pledge of net revenues of the utility system. These net revenues consist of the income of the public utility remaining after paying expenses necessary to operate and maintain the utility. The DBF notes that this current practice requires the efficient operation of the utility system to assure that sufficient net revenues are available to pay debt service.

Creation and Financing Authority of Intergovernmental Utility Authorities

The Florida Interlocal Cooperation Act of 1969 (Act) is intended to allow local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.¹⁷ The Act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal

⁸ Section 166.101(4), F.S.

⁹ Section 166.101(2), F.S.

¹⁰ FLA. CONST. art. VII, s. 12; s. 166.101(3), F.S.

¹¹ Section 166.101, F.S., et seq.

¹² Sections 180.06 and 180.08, F.S.

¹³ Section 180.08, F.S.

¹⁴ “Unit of local government” is defined in s. 218.369, F.S., as “a county, municipality, special district, district school board, local agency, authority, or consolidated city-county government or any other local governmental body or public body corporate and politic authorized or created by general or special law and granted the power to issue general obligation or revenue bonds.”

¹⁵ Section 218.37, F.S.

¹⁶ *Id.* The DBF is authorized only to collect information concerning these bonds; it does not exercise any substantive authority to review or approve these transactions.

¹⁷ Section 163.01(2), F.S.

agreement.¹⁸ Under such an agreement, the local governmental units may create a separate legal or administrative entity “to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.”¹⁹ A separate entity created by an interlocal agreement possesses the authority specified in the agreement.²⁰ Among the authority granted such an entity is the power to authorize, issue, and sell bonds.²¹

The Act specifically addresses the establishment of such entities to provide water service or sewer service (hereinafter referred to as “intergovernmental utility authorities” or “IGUAs”). The Act authorizes the creation of IGUAs to acquire, own, construct, improve, operate, and manage public facilities relating to a governmental function or purpose, including water and alternative water supply facilities, wastewater facilities, and water reuse facilities.²² An IGUA created under this provision may also finance such facilities on behalf of any person. The membership of an IGUA created under this provision is limited to two or more special districts, municipalities, or counties of the state. The IGUA’s facilities may serve populations “within or outside of the members of the entity,” but not within the service area of an existing utility system. An IGUA is not subject to regulation by the Public Service Commission.²³

An IGUA created under s. 163.01(7)(g), F.S., may finance or refinance the acquisition, construction, expansion, and improvement of facilities through the issuance of bonds, notes, or other obligations. Except as may be limited by the interlocal agreement under which the entity is created, all of the privileges, benefits, powers, and terms of the statutes relating to counties²⁴ and municipalities²⁵ are fully applicable to the IGUA. Bonds, notes, and other obligations issued by the IGUA are issued on behalf of the public agencies that are members of the IGUA.²⁶

The Florida Governmental Utility Authority (FGUA) was formed in 1999 pursuant to s. 163.01(7)(g), F.S. As noted on its website, the FGUA is a separate legal entity created by interlocal agreement with the limited purpose of owning and operating a public utility system. It provides retail water and wastewater utility services in several portions of the state. The FGUA consists of 14 counties: Alachua, Citrus, Collier, Hardee, Hillsborough, Lake, Lee, Marion, Orange, Pasco, Polk, Putnam, Seminole, and Volusia.²⁷ The FGUA’s governing board is comprised of six members representing Citrus, Hendry, Lee, Marion, Pasco, and Polk counties.²⁸ Each board member is a county employee appointed by their local government.²⁹

¹⁸ Section 163.01(5), F.S.

¹⁹ Section 163.01(2), F.S.

²⁰ Section 163.01(7)(b), F.S.

²¹ Section 163.01(7)(d), F.S.

²² Section 163.01(7)(g), F.S.

²³ Section 367.022(2), F.S.

²⁴ Section 125.01, F.S.

²⁵ Section 166.021, F.S.

²⁶ Section 163.01(7)(g)7., F.S.

²⁷ <http://www.fgua.com> (See “History,” last visited Jan. 31, 2016).

²⁸ <http://www.fgua.com> (See “The board,” last visited Jan. 31, 2016).

²⁹ *Id.*

Utility Securitization Financing in Florida

Following the severe tropical storm seasons that Florida faced in 2004 and 2005, the Legislature created a new financing mechanism, referred to as securitization, by which investor-owned electric utilities could petition the Public Service Commission for issuance of a financing order authorizing the utility to issue bonds through a separate legal entity.³⁰ If granted, the financing order was required to establish a nonbypassable charge to the utility's customers in order to provide a secure stream of revenues to the separate legal entity from which the bonds would be paid. The purpose of this mechanism was to allow the utilities access to low-cost financing to cover storm recovery costs and replenishment of depleted storm reserve funds. This mechanism has been implemented in only one instance.³¹

Public Service Commission Jurisdiction over Water and Wastewater Utilities

Chapter 367, F.S., is the Water and Wastewater System Regulatory law. Section 367.011, F.S., grants the Public Service Commission (PSC) exclusive jurisdiction over each utility with respect to its authority, service, and rates. It also declares the regulation of utilities to be in the public interest, and the chapter to be an exercise of the police power of the state for the protection of the public health, safety, and welfare. Section 367.022(2), F.S., exempts water or wastewater systems owned, operated, managed, or controlled by governmental authorities,³² from the application of chapter 367, F.S.

Public Service Commission Rate-Making and Water Quality

The PSC establishes utility rates which are just, reasonable, compensatory, and not unfairly discriminatory.³³ In doing so, the commission must consider the value and quality of the service and the cost of providing the service, which includes, but is not limited to: debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service.³⁴

In setting rates, the PSC's primary focus is on the quality of the service provided; not the quality of the water itself.³⁵ The quality of the water and compliance with secondary water quality standards are recurring issues at the PSC.³⁶ In 2012, the Legislature created the Study Committee on Investor-Owned Water & Wastewater Utility Systems (Study Committee) and directed it to review a list of issues, including water quality.³⁷ The study committee recommended a

³⁰ Section 366.8260, F.S.

³¹ Docket No. 060038-EI, Florida Public Service Commission.

³² In this context, the term "governmental authority" means a political subdivision, a regional water supply authority, or a nonprofit corporation formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility. See Section 367.021(7), F.S.

³³ Section 367.081(2)(a)1., F.S.

³⁴ *Id.*

³⁵ *See id.*

³⁶ Water quality of service problems, for which customers have provided testimony at PSC hearings, include black water, pressure, odor, and customer service. *See* PSC, Final Order No. PSC-97-0280-FOF-WS (Mar. 12, 1997).

³⁷ Chapter 2012-187, s. 2, Laws of Fla.

mechanism within a rate case proceeding to require the PSC to consider the extent to which a utility meets secondary water and wastewater standards.³⁸

Standards for Secondary Water Quality Characteristics and Petitions to Revoke a Certificate of Authorization

Secondary water quality characteristics refer to those characteristics of drinking water that typically have no adverse health effects, but instead are generally associated with aesthetic concerns. The Department of Environmental Protection (DEP) has established maximum allowed levels for 14 criteria of secondary water quality characteristics. Based on the U.S. Environmental Protection Agency (EPA) mandated standards, the DEP's list of secondary water quality characteristics includes: aluminum, chlorine, copper, fluoride, iron, manganese, silver, sulfate, zinc, color, odor, pH, total dissolved solids, and foaming agents.³⁹

In 2014, the Legislature created s. 367.0812, F.S., which requires the PSC to consider the extent a utility meets secondary water quality standards in setting the utility's rates.⁴⁰ Additionally, the Legislature created a mechanism for customers of a water utility to petition the PSC for revocation of a utility's certificate of authorization.⁴¹ The revocation procedure requires at least 65 percent of the customers in the utility's service area to sign a petition, and the petition must state the specific issues the customers have with the quality of their water service, identify each time the issue was reported to the utility, and identify how long the issue has existed.⁴²

The PSC must evaluate the petition and determine whether the utility is failing to provide quality water service.⁴³ The PSC may dismiss the petition, require the utility to take steps to correct the quality of the water service, or revoke the utility's certificate of authorization and appoint a receiver until a sale of the utility system is approved pursuant to s. 367.071, F.S.

III. Effect of Proposed Changes:

Utility Cost Containment Bonds

Summary

The bill establishes a new financing mechanism – utility cost containment bonds – available to an authority to finance or refinance projects related to water or wastewater service on behalf of a municipality, county, special district, public corporation, regional water authority, or other governmental entity. Utility cost containment bonds are secured by a utility project charge levied on utility customers. The separate charge is designed to satisfy rating agency criteria to achieve a

³⁸ For the text of the recommended statutory change, see Study Committee on Investor-Owned Water & Wastewater Utility Systems, Study Committee Report (Feb. 15, 2013), Attachment IV.9-D, at 115 of 386, *available at* <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/waterandwastewater/Water-Wastewater%20Sub%20Committee%20Report.pdf> (last visited Feb. 08, 2016).

³⁹ DEP, *Secondary Drinking Water Standards*, http://www.dep.state.fl.us/water/drinkingwater/sec_con.htm (last visited Feb. 08, 2016).

⁴⁰ Chapter 2014-68, Laws of Fla. (creating ss. 367.072 and 367.0812, F.S., effective July 1, 2014).

⁴¹ *Id.*

⁴² Section 367.072(2), F.S.

⁴³ Section 367.072(3), F.S.

higher bond rating and, therefore, a lower interest rate and more favorable terms for bonds issued to fund eligible projects.

Briefly, the financing mechanism created by the bill operates as follows:

- A local agency applies to the authority to finance the costs of an eligible project using utility cost containment bonds.
- The authority adopts a financing resolution, setting forth certain requirements for issuance of the bonds.
- The bonds are secured by the revenues from a separate utility project charge stated on the bill of each present and future customer of the services specified in the financing resolution.
- The revenues from the charge are transferred to the authority and held in trust for the benefit of the bondholders.

Definitions

The bill creates a number of new definitions related to the new financing mechanism.

“Authority” means an entity created pursuant to s. 163.01(7)(g), F.S., or a separate legal entity created by one or more local agencies. This allows any local agency or agencies to act as an authority as long as it creates a separate legal entity.

“Cost,” as applied to a utility project or portion of a utility project financed under this section, means any of the following:

- 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;
- 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;
- Finance charges;
- Interest, as determined by the authority;
- Provisions for working capital and debt service reserves;
- Expenses for extensions, enlargements, additions, replacements, renovations, and improvements;
- Expenses for architectural, engineering, financial, accounting, and legal services, and for plans, specifications, estimates, and administration; and
- 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.

“Customer” means a person receiving water or wastewater service from a publicly owned utility.

“Finance” or “financing” includes refinancing.

“Financing cost” means any of the following:

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

- The cost related to issuing or servicing utility cost containment bonds, including payment under an interest rate swap agreement, and any types of fee;
- 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;
- Any coverage charges; and
- The funding of one or more reserve accounts related to utility cost containment bonds.

“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.

“Governing body” means the body that governs a local agency.

“Local agency” means a member of the authority, or an agency or subdivision of that member, that 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.⁴⁴

“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, F.S., Internet, or cable services.

“Publicly owned utility” means a utility furnishing 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.

“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:

- Bond purchase agreements;
- Bonds acquired by the authority;
- Installment sale agreements and other revenue-producing agreements entered into by the authority;
- Utility projects financed or refinanced by the authority;
- Grants and other sources of income;
- Moneys paid by a local agency;
- Interlocal agreements with a local agency, including all service agreements;
- 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.

⁴⁴ Because the FGUA provides “public utility services” (water and wastewater services) that may be supported by a financeable “utility project,” it appears to qualify as an authority or other governmental entity of the state and would meet the definition of a “local agency.” Thus, the FGUA could be both an “authority” and a “local agency” under the bill.

“Utility cost containment bonds” means bonds, notes, commercial paper, variable rate securities, and any other evidences 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.

“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 in or out of the state that is used in connection with the operations of a publicly owned utility.

“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 pursuant to the bill. The term includes any authorized adjustment to the utility project charge.

“Utility project property” means the property right created by the bill. The term does not include any interest in a customer’s real or personal property, but does include the right, title, and interest of an authority in any of the following:

- The financing resolution, the utility project charge, and any adjustment to the utility project charge;
- 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; and
- All rights to obtain adjustments to the utility project charge pursuant to the bill.

Local Agency Authority

The process to issue utility cost containment bonds is initiated by the governing body of the local agency holding a public meeting and determining:

- The project to be financed is a utility project;⁴⁵
- The local agency will finance costs of the utility project and the associated financing costs will be paid from utility project property (i.e., the charge to utility customers);
- Based on the best information available, 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 was financed with bonds payable from revenues of the publicly owned utility.

After such meeting and determinations, the local agency may apply to the utility authority to finance the costs of a utility project using the proceeds of utility cost containment bonds. In its application, the local agency must specify the utility project to be financed, the maximum principal amount, the maximum interest rate, and the maximum stated terms of the utility cost containment bonds.

⁴⁵ Under the bill, this determination is deemed “final and conclusive.”

The Utility Authority

The bill authorizes an authority to issue utility cost containment bonds to finance or refinance utility projects; to refinance debt of a local agency previously issued to finance or refinance such projects, if the refinancing results in present value savings; or, upon approval of a local agency, to refinance previously issued utility cost containment bonds.

To finance a utility project, the authority may form a single-purpose limited liability company and authorize the company to adopt the financing resolution. Alternatively, the authority and two or more of its members or other public agencies may create a new single-purpose entity by interlocal agreement. Either type of entity may be created by the authority solely for the purposes of performing the duties and responsibilities of the authority and is treated as an authority for purposes of the bill.

With respect to regional water projects, the authority must work with local agencies that request assistance to determine the most cost-effective manner of financing. If these entities determine that issuance of utility cost containment bonds will result in lower financing costs for a project, the authority must issue the bonds at the request of the local agencies.

The governing body of an authority that is financing the costs of an eligible utility project must adopt a financing resolution and impose a utility project charge. All provisions of the financing resolution are binding on the authority. The financing resolution must include the following:

- A description of the financial calculation method the authority will use to determine 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 adjustment methodology may not be changed. The authority must establish the allocation of the utility project charge among classes of customers of the publicly owned utility. The decisions of the authority are final and conclusive.
- A requirement that 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 must 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.
- A requirement that the utility project charge be charged separately from other charges on the bill of each customer of the utility that is in the class or classes of customers specified in the financing resolution.
- A requirement that the authority enter into a servicing agreement with the local agency or its publicly owned utility to collect the utility project charge.

The authority may require in the financing resolution that, in the event of default by the local agency or its publicly owned utility, the authority must order the sequestration and payment to the beneficiaries of the revenues arising from the utility project property (discussed in detail, below) if the beneficiaries apply for payment of the revenues under a lien. This may apply to a successor entity as well. 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, any successor entity must assume and perform all obligations of the local agency and its publicly

owned utility and assume the servicing agreement with the authority while the utility cost containment bonds remain outstanding.

Utility Project Charges

In the financing resolution, the authority must impose a utility project charge sufficient to ensure timely payment of all financing costs with respect to utility cost containment bonds. The charge must be based on estimates of water or wastewater service usage. The authority may require information from the local agency or its publicly owned utility to establish the charge.

The utility project charge is a nonbypassable charge on all present and future customers of the publicly owned utility in the class or classes of customers specified in the financing resolution at the time of its adoption. If a customer who is subject to the charge enters into an agreement to purchase water or wastewater service from a supplier other than the publicly owned utility, the customer remains liable for payment of the 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 (for example, if the customer gets a well or if a competitor were allowed to also serve the area).

At least annually, and at any other interval specified in the financing resolution and related documents, the authority must determine whether adjustments to the utility project charge are required and, if so, make the necessary adjustments to correct for any overcollection or undercollection of financing costs from the charge or to otherwise ensure timely payment of the financing costs of the bonds, including payment of any required debt service coverage. The authority may require information from the local agency or its publicly owned utility to adjust the charge. If an adjustment is deemed necessary, it must be made using the methodology specified in the financing resolution. An adjustment may not impose the charge upon a class of customers not previously subject to the charge under the financing resolution.

Revenues from a utility project charge are deemed special revenues of the authority and do not constitute revenue of the local agency or its publicly owned utility for any purpose. The local agency or its publicly owned utility must act as a servicing agent for collecting the charge pursuant to a servicing agreement to be required by the financing resolution. The local agency or its publicly owned utility is authorized to use its established collection policies and remedies under law to enforce collection of the charge. The money collected must be held in trust for the exclusive benefit of the persons entitled to have the financing costs paid from the utility project charge.

The timely and complete payment of all utility project charges by the customer is a condition of receiving water or wastewater service from the publicly owned utility. A customer liable for a utility project charge is not permitted to withhold payment of any portion of the charge.

The pledge of a utility project charge to secure payment of utility cost containment bonds is irrevocable, and the state or any other entity is not permitted to reduce, impair, or otherwise adjust the utility project charge, except for the periodic adjustments that the authority is required to make pursuant to the financing resolution.

Utility Project Property

The utility project charge constitutes utility project property when a financing resolution authorizing the charge becomes effective. Utility project property constitutes property, including contracts that secure utility cost containment bonds, whether or not the revenues and proceeds arising with respect to the utility project property have accrued. The utility project property continuously exists as property for all purposes for 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.

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. The lien secures the payment of all financing costs that exist at that time or that subsequently arise to the holders of the bonds, the trustee or representative for the holders of the bonds, and any other entity specified in the financing resolution or the documents relating to the bonds. 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 other person.

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. 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.

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

Utility Cost Containment Bonds

The proceeds of utility cost containment bonds made available to the local agency or its publicly owned utility must be used for the utility project identified in the application for financing of the project or used to refinance indebtedness of the local agency that financed or refinanced the project. The bonds must be issued pursuant to the provisions of the bill and the procedures specified for intergovernmental utility authorities under s. 163.01(7)(g)8., F.S., and may be validated pursuant to existing procedures for such entities under s. 163.01(7)(g)9., F.S.

The authority must pledge all utility project property as security for payment of the bonds. All rights of the authority with respect to the pledged property are for the benefit of and enforceable by the beneficiaries of the pledge as provided in the related financing documents.

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

- Continue to operate the utility, including the utility project that is being financed or refinanced;

- Collect the utility project charge from customers for the benefit and account of the authority and the beneficiaries of the pledge of the charge, and
- Separately account for and remit revenue from the utility project charge to, or for the account of, the authority.

The utility cost containment bonds are 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 bonds and any additional security or credit enhancement specified in the documents relating to the bonds. If the authority is financing the project through a single-purpose limited liability company, the bonds are payable from, and secured by, a pledge of amounts paid by the company to the authority from the applicable utility project property. This represents the exclusive method of perfecting a pledge of utility project property by the company.

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

The authority may not rescind, alter, or amend any resolution or document that pledges utility cost charges for payment of utility cost containment bonds.

Subject to the terms of the pledge document, 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.

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 of the state. Financing costs are not a pledge of the full faith and credit of the state or any political subdivision, including the authority, but are payable solely from the funds identified in the documents relating to the bonds. This does not preclude guarantees or credit enhancements in connection with the bonds.

Except as provided in the bill with respect to adjustments to a utility project charge, recovery of the financing costs for utility cost containment bonds from the utility project charge is irrevocable. Further, the authority is prohibited from: rescinding, altering, or amending the applicable financing resolution to revalue or revise the financing costs of the bonds for ratemaking purposes; determining that the financing costs for the related bonds or the utility project charge is unjust or unreasonable; or in any way reducing or impairing the value of utility project property that includes the charge. The amount of revenues arising with respect to the financing costs for the related bonds or the charge are not subject to reduction, impairment, postponement, or termination for any reason until all financing costs to be paid from the charge are fully met and discharged.

Further, except as provided in the bill with respect to adjustments to a utility project charge, the bill establishes a pledge that the state may not limit or alter the financing costs or the utility project property, including the utility project charge associated with the bonds, or any rights related to the utility project property until all financing costs with respect to the bonds are fully discharged. This provision does not preclude limitation or alteration if adequate provision is made by law to protect the owners of the bonds. The state's pledge may be included by the authority in the governing documents for the bonds.

Bankruptcy Prohibition

Notwithstanding any other law, an authority that has issued utility cost containment bonds may not 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 bonds. Further, a governmental officer or organization may not authorize the authority to become such a debtor or become subject to such a case or proceeding in this circumstance.

Construction

The bill provides for liberal construction of the bond provisions to effectively carry out its intent and purposes. Further, the bill expressly grants and confers upon public entities all incidental powers necessary to carry the bill into effect.

Water Quality Standards: Revocation of Certificate and Eminent Domain

The bill amends ss. 153.03 and 367.072, F.S., to authorize a county to bring an eminent domain action upon the filing of a petition for revocation of water utility's certificate of authorization for a water system and to revise the PSC remedies upon the filing of such a petition.

Section 153.03, F.S., authorizes a county to purchase, construct, improve, extend, enlarge, or reconstruct a water supply system, including the authority to acquire land through eminent domain. The bill authorizes a county to use eminent domain to acquire a water supply system pursuant to an action initiated under s. 367.072, F.S.

The bill amends s. 367.072, F.S. in three ways. First, it provides legislative findings that it is within the public interest for water service to be priced "at a rate that is commensurate with the market" and that "the residents of the state have a right to participate in the selection of their water service provider." Both findings are incompatible with economic regulation, in which there is no open market and the PSC or county regulatory agency sets all rates and in which there are service territories and no choice or selection of service provider.

Second, it revises the PSC's authority in proceedings on a petition to revoke a water utility's certificate of authorization. The bill deletes the current standard that the PSC may revoke a certificate if it "finds that revocation is in the best interest of the customers." The PSC is still to evaluate the same evidence,⁴⁶ but no longer has a statutory standard for its decision. Also, the bill

⁴⁶ The statute requires the PSC to "evaluate the issues identified in the petition, the utility's response as to whether it is providing quality of water service, and any other factor the commission deems relevant."

changes the PSC's resolutions options. Currently at the end of a revocation proceeding the PSC may:

- dismiss the petition if it has clear and convincing evidence supporting dismissal;
- require the utility to redress identified problems by establishing the steps, including benchmarks and timeframes, which are necessary for the utility to correct the quality of water service issues; or
- revoke the utility's certificate of authorization.

The bill deletes the authority to require the utility to redress the problems, leaving only dismissal of the petition or revocation of the certificate.

Third, the bill adds provisions relating to eminent domain. Upon receipt of a properly filed petition, the PSC is required to send to the county where the customers are located a copy of the petition and notify such county of its right to initiate condemnation by eminent domain proceedings pursuant to this section and s. 153.03. The bill expressly authorizes the county where the customers are located to deem it a public necessity that the utility be brought under county ownership, owing to the demonstrated dissatisfaction with the water service received by such customers, and to begin condemnation by eminent domain proceedings against the utility. If both a PSC revocation proceeding and an eminent domain proceeding are begun, but the PSC proceeding both is completed prior to completion of the eminent domain proceeding and results in a revocation of the utility's certificate of authorization, then the condemnation proceeding must be dismissed and a receiver must be appointed.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Constitution prohibits the taking of private property through eminent domain except for a public purpose.⁴⁷ The bill provides that, upon the filing of a petition for revocation of a water utility's certificate of authorization based on inadequate quality of water service, "and owing to the demonstrated dissatisfaction with the water service received by such customers, the county where the customers are located also may deem it a public necessity that the utility be brought under county ownership, and may, upon its

⁴⁷ Section 6(a), Article X, Florida Constitution.

own election, begin condemnation by eminent domain proceedings against the utility.” There may be some question as to whether this statement of “public necessity” to take the water utility’s property due to “the demonstrated dissatisfaction⁴⁸ with the water service” constitutes sufficient “public purpose” under the constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Customers may benefit from lower financing costs for local agency utility projects, if the resulting savings are passed through to customers. The bill does not require that savings be passed through to customers.

Once utility cost containment bonds are issued, a customer will be obligated to pay the charge for as long as he or she resides on property within the service territory.

C. Government Sector Impact:

The bill may reduce local government expenditures by reducing financing costs for water or wastewater utility projects for utilities owned and operated by a local agency, including any municipality, county, special district, public corporation, regional water authority, or other governmental entity sponsoring or refinancing a utility project.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 153.03 and 367.072.

The bill also creates an as-yet unnumbered section of the Florida Statutes.

⁴⁸ The dissatisfaction is demonstrated by the filing of the petition, not by any evidence admitted during any hearing on the petition.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on February 8, 2016:

The CS amends the definition of “authority” to mean an entity created under s. 163.01(7)(g), F.S., or a separate legal entity created by one or more local agencies. The CS requires the PSC to notify a county when a petition for revocation is filed and clarifies that counties can condemn a utility through eminent domain proceedings after a petition for revocation is filed with the PSC. The CS makes findings that water service should be priced at a rate commensurate with the market and quality of the service provided and that customers have a right to participate in the selection of their water service provider. The CS removes the option of the PSC to require a utility to take necessary steps to correct quality of water service after finding that the utility is not providing quality of water service.

- B. **Amendments:**

None.