

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: SB 910

INTRODUCER: Senator Legg

SUBJECT: Utility Projects

DATE: March 18, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.			CA	
3.			AP	

I. Summary:

SB 910 creates an alternative method for financing the costs of certain utility projects using utility cost containment bonds. These bonds are issued by an authority on behalf of a local agency that owns and operates a publicly owned utility that provides public utility services, including water, wastewater, electric, or stormwater. The bonds may receive a lower interest rate because payment is secured by a pledge of the utility project. The primary utility project property is the utility project charge, which is imposed on customers, based on estimates of water, wastewater, electric, or stormwater service usage, to ensure timely payment of all financing costs with respect to utility cost containment bonds.

II. Present Situation:

The Florida Interlocal Cooperation Act of 1969 is intended to permit 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 and thereby 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.¹ The Act provides that local governmental entities may conduct a joint exercise of power by entering into a contract in the form of an interlocal agreement.² Further, an interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council.³ Among the authority granted such an entity is the power to authorize, issue, and sell bonds.⁴

¹ Section 163.01(2), F.S.

² Section 163.01(5), F.S.

³ Section 163.01(7), F.S.

⁴ Section 163.01(7)(d), F.S.

Separate provisions relate to projects for water or wastewater or for electricity. A separate legal entity, the membership of which is limited to municipalities and counties and which may include a special district, may acquire, own, construct, improve, operate, and manage public facilities, or finance facilities on behalf of any person, relating to a governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside (the geographic and political boundaries?) of the members of the entity.⁵ Such an entity may finance or refinance the acquisition, construction, expansion, and improvement of such facilities through the issuance of its 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 counties⁶ and municipalities⁷ are fully applicable to the entity. Bonds, notes, and other obligations issued by the entity are issued on behalf of the public agencies that are members of the entity.

A separate legal entity, the membership of which consists only of electric utilities and which is created for the purpose of exercising the powers granted by the Joint Power Act, may exercise specified powers relating to ownership and operation of an electric project⁸ and may, for the purpose of financing or refinancing the costs of an electric project, exercise all powers in connection with the authorization, issuance, and sale of bonds as are conferred by the bond financing statutes for counties,⁹ or municipalities,¹⁰ or both.¹¹

There is one separate legal entity organized for water utilities, the Florida Governmental Utility Authority (FGUA), and one organized for electric utilities, the Florida Municipal Power Agency (FMPA). The FGUA consists of seven counties: Citrus, DeSoto, Hendry, Lee, Marion, Pasco, and Polk.¹² The FMPA is owned by 31 municipal electric utilities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park.¹³

⁵ Section 163.01(7)(g), F.S.

⁶ Section 125.01, F.S.

⁷ Section 166.021, F.S.

⁸ Section 163.01(15), F.S.

⁹ Chapter 159, F.S.

¹⁰ Chapter 166, F.S.

¹¹ Section 163.01(7)(c), F.S.

¹² <http://www.fgua.com/the-board>, last accessed 3/10/2014.

¹³ <http://www.fmpa.com/index.php/about-us/members>, last accessed 3/10/2014.

III. Effect of Proposed Changes:

The bill creates an alternative method for financing¹⁴ the costs¹⁵ of certain utility projects¹⁶ using utility cost containment bonds.¹⁷ These bonds are issued by an authority¹⁸ on behalf of a local agency¹⁹ that owns and operates a publicly owned utility²⁰ that provides public utility services, including water, wastewater, electric, or stormwater. The bonds may receive a lower interest rate because payment is secured by a pledge of the utility project property²¹ 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. The primary utility project property is the utility project charge, which is imposed on customers,²² based on estimates of water, wastewater, electric, or stormwater service usage, to ensure timely payment of all financing costs²³ with respect to utility cost containment bonds.

¹⁴ The terms “finance” or “financing” include refinancing.

¹⁵ “Cost,” as applied to a utility project or a portion of a utility project financed under this act, means:

- 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, plans, specifications, estimates, and administration.
- Any other expense necessary or incidental to determining the feasibility of constructing any utility project or incidental to the construction, acquisition, or financing of any utility project.

¹⁶ “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.

¹⁷ “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.

¹⁸ “Authority” means an entity created pursuant to s. 163.01(7)(g), F.S., which provides public utility services and whose membership consists of at least three counties. The term includes any successor to the powers and functions of such an entity. – As is stated above, the FGUA is currently the only entity created under this paragraph.

¹⁹ “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, or other governmental entity of the state that is sponsoring or refinancing a utility project.

²⁰ “Publicly owned utility” means a utility furnishing water, wastewater, electric, or stormwater service that is owned and operated by a local agency. The term includes any successor to the powers and functions of such a utility.

²¹ “Utility project property” means the property 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.
- All rights to obtain adjustments to the utility project charge.

²² “Customer” means a person receiving water, wastewater, electric, or stormwater service from a publicly owned utility.

²³ “Financing costs” 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.

To obtain utility cost containment bonds, 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. The local agency must specify the utility project to be financed by the cost containment bonds and the maximum principal amount, the maximum interest rate, and the maximum stated terms of the utility cost containment bonds.

Before applying, the governing body²⁴ of the local agency must determine all of the following:

- The project to be financed is a utility project.
- The local agency will finance costs of the utility project and the financing costs associated with the financing will be paid from utility project property (the charge to utility customers).
- 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 was financed with bonds payable from revenues of the publicly owned utility.

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.

If a local agency that has outstanding utility cost containment bonds ceases to operate a water, wastewater, electric, or stormwater utility, directly or through its publicly owned utility, references to the local agency or to its publicly owned utility apply to the successor entity. The successor entity must assume and perform all obligations of the local agency and its publicly owned utility and assume the servicing agreement while the utility cost containment bonds remain outstanding.

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 the 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.

To finance a utility project, the authority may form a single-purpose limited liability company and authorize the company to adopt the financing resolution of such utility project or create a new single-purpose entity by interlocal agreement whose membership shall consist of the authority and two or more of its members or other public agencies. The authority may create a single-purpose limited liability company or a single-purpose entity solely for the purpose of

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- 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.
 - A payment or expense associated with a bond insurance policy; financial guaranty; a contract, agreement, or other credit or liquidity enhancement for bonds; or a contract, agreement, or other financial agreement entered into in connection with utility cost containment bonds.
 - Any coverage charges.
 - The funding of one or more reserve accounts relating to utility cost containment bonds.

²⁴ "Governing body" means the body that governs a local agency.

performing the cost containment bond related duties and responsibilities of the authority and constitutes an authority for all cost containment bond purposes. Reference to the authority includes such a company or entity.

The governing body of an authority that is financing the costs of a utility project must adopt a financing resolution²⁵ and impose a utility project charge. All provisions of a financing resolution adopted pursuant to this section are binding on the authority. The financing resolution must:

- 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 must 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.
- Require each customer in the class or classes of customers specified in the financing resolution who receives water, wastewater, electric, or stormwater service through the publicly owned utility to pay the utility project charge regardless of whether the customer has an agreement to receive water, wastewater, electric, or stormwater service from a person other than the publicly owned utility.
- 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.
- Require 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 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, must order the sequestration and payment to the beneficiaries of revenues arising from utility project property. This provision does not limit any other remedies available to the beneficiaries by reason of default.

The utility project charge imposed on customers to ensure timely payment of all financing costs with respect to utility cost containment bonds 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 a customer of the publicly owned utility that is subject to a utility project charge enters into an agreement to purchase service from a person other than the publicly owned utility, the customer remains liable for the payment of the utility project charge as if the customer had not entered into the agreement. The customer may discharge the liability by continuing to pay the utility project charge as it accrues or by making a one-time payment, as determined by the authority.

²⁵ “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. A financing resolution may be separate from a resolution authorizing the issuance of the bonds.

The authority must determine at least annually whether adjustments to the utility project charge are required 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. If the authority determines that an adjustment is required, the adjustment must be made using the methodology specified in the financing resolution. The adjustment may not impose the utility project charge on a class of customers that was not subject to the utility project charge pursuant to the financing resolution imposing the utility project charge.

Revenues²⁶ 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. The local agency or its publicly owned utility must 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 character as revenues of the authority by virtue of possession by the local agency or its publicly owned utility.

The timely and complete payment of all utility project charges by the customer is a condition of receiving water, wastewater, electric, or stormwater 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.

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.

The utility project charge imposed on customers constitutes utility project property on the effective date of the financing resolution authorizing such utility project charge.²⁷ Utility project property constitutes property, including contracts 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 must continuously exist as property for all purposes with all of the rights and privileges of this section for the period provided in the

²⁶ "Revenue" means income and receipts of the authority from any of the following:

- A bond purchase agreement.
- Bonds acquired by the authority.
- Installment sales 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.
- 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.

²⁷ This appears to mean that if the bond is for construction of new facilities, customer payment on the bond will begin before construction is complete and the facility comes into use.

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 then existing or subsequently arising to the holders of the utility cost containment bonds, the trustee or representative for 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. 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 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 must be applied as determined by the authority for the benefit of the utility for which the utility cost containment bonds were issued.

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, at a minimum, that the publicly owned utility:

- Continue to operate its publicly owned 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 utility project charge.
- Separately account for and remit revenue from the utility project charge to, or for the account of, the authority.

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 utility cost containment bonds and any additional security or credit enhancement specified in the documents relating to the utility cost containment bonds. If the authority is financing the project through a single-purpose limited liability company, the utility cost containment 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 provision 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.

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. All utility cost containment bonds must contain on their 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.

The authority may not rescind, alter, or amend any resolution or document that pledges utility cost charges for payment of utility cost containment bonds. Except as provided 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, either 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 reduce or impair the value of utility project property that includes the utility project charge, either directly or indirectly. The amount of revenues arising with respect to the financing costs for the related utility cost containment bonds or the utility project charge are 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.

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 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 in the documents relating to the utility cost containment bonds. This provision does not preclude guarantees or credit enhancements in connection with utility cost containment bonds.

Except as provided with respect to adjustments to a utility project charge, the state does hereby pledge and agree with the owners of utility cost containment bonds that the state shall neither limit nor alter the financing costs or the utility project property, including the utility project charge, relating to the utility cost containment bonds, or any rights in, to, or under 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 for the protection of the owners. The authority may include this pledge by the state in the governing documents for utility cost containment bonds.

Notwithstanding any other law, an authority that issued utility cost containment bonds may not, and no governmental officer or organization shall so 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.

The provisions of the bill and all grants of power and authority are to be liberally construed to effectuate their purposes. All incidental powers necessary to carry into effect the provisions of this section are expressly granted to, and conferred upon, public entities.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that a publicly owned utility has lower interest costs and passes these savings on to customers, these customers will benefit.

C. Government Sector Impact:

Governmental entities that own and operate a publicly owned utility that provides water, wastewater, electric, or stormwater services and that finance a project using cost containment bonds may have lower interest costs.

VI. Technical Deficiencies:

The word "UTILITIY" on line 363 should be "UTILITY."

The sentence on lines 408-410 is unclear; there may be a word missing.

On line 418, the cross-reference to s. 163.01(7)(g)9, should have a period before the comma.

VII. Related Issues:

The bill seems to contemplate that once a "customer" is established, there will always be such a customer:

- The utility project charge is established as a nonbypassable charge to all present and future customers (lines 298-299).
- If an existing customer obtains services elsewhere, the customer is still liable for payment of the charge as if the customer still received services from the publicly owned utility (lines 301-309 and 268-270).
- If an existing customer sells property, for the purchaser to receive utility services the timely payment of all utility project charges by the purchaser is a condition of receiving the services (lines 349-356).

However, there may be circumstances in which a customer ceases to be a customer and there is no replacement customer, at least for some time, for example:

- if an electricity customer goes completely off grid and purchases no electricity;
- if a property is foreclosed or otherwise sits empty due to non-use by the owner; or
- if a tenant is the customer of record and leaves and is not replaced, or not immediately replaced.

It is unclear what would happen relative to the utility project charge in such circumstances. It is also unclear whether these potential circumstances will be addressed in the resolution documents and whether they matter.

The bill defines “utility project” to mean 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 (lines 166-171). It is unclear which of the items in this list the italicized phrase would apply to. It is also unclear under what circumstances a publicly owned utility would acquire real property or other property located outside Florida for use in connections with its operations.

The utility project charge imposed on each customer is to be based on estimates of water, wastewater, electric, or stormwater service usage (lines 290-292). It is unclear how the charge will be calculated, whether the charge will be a set-amount or an amount per unit of service, or whether each customer will pay the same amount for this charge.

The bill contains redundant provisions, for example those on securing services from a source other than the publicly owned utility (lines 264-270 and 301-309) and those relating to the irrevocability and immutability of the pledge of a utility project charge (lines 357-363 and 441-446). While this is not problematic in itself, it could create problems if provisions are amended in one location but not the other.

VIII. Statutes Affected:

This bill creates an un-numbered section of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
