

#140730

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1355 Gainesville Regional Utilities, Alachua County
SPONSOR(S): Perry
TIED BILLS: IDEN./SIM. BILLS:

1/21/16
Susan B

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee		Darden	Miller
2) Regulatory Affairs Committee			

SUMMARY ANALYSIS

HB 1355 is a local bill amending the charter for the City of Gainesville to establish the Gainesville Regional Utilities Authority (Authority). Currently, Gainesville Regional Utilities (GRU) is a municipal utility under the authority of the Gainesville City Commission. GRU provides electric, natural gas, water, wastewater, and telecommunications services. The bill transfers authority over the GRU system from the city commission to the Authority, a board to be appointed by the city commission. The bill details Authority's governance and leadership structure, as well as duties and powers. In summary of its main components, the bill:

- Repeals Section 3.06 of the current City of Gainesville charter relating to the general manager for utilities.
- Establishes the Authority as a regional utilities authority.
- Provides that the Authority is a unit of city government, but free from the direction and control of the city commission and city charter officers.
- Provides that the Authority will consist of 5 members appointed by the city commission.
- Sets qualification requirements for Authority members.
- Provides that the monthly salary for members of the Authority will be \$18,000, adjusted by the consumer price index.
- Staggers the term time period for initial Authority members and provides for four year terms thereafter.
- Provides for removal of members from the Authority for cause, and sets forth grounds for removal from office.
- Gives the Authority the power of eminent domain.
- Gives the Authority exclusive power and authority to bill and collect fees or charges for all utilities.
- Provides that a Chief Executive Officer/General Manager (CEO/GM) will direct and administer utilities functions under the Authority's policies and authority.

The bill takes effect upon its approval by a majority vote of the qualified electors of the City of Gainesville voting in a referendum to be held in March 2017, in conjunction the City of Gainesville's municipal elections, except that sections 4 and 5 shall take effect upon becoming law.

Gainesville Regional Utilities (GRU) was established in 1912 as a city-run electric utility.¹¹ It is the fifth largest municipal electric utility in Florida, serving approximately 93,000 retail and wholesale customers in Gainesville and surrounding areas.¹² GRU offers electric, natural gas, water, wastewater, and telecommunications services. An audit for 2012-2013 states that GRU in September 2013 had \$1.2 billion in capital assets, and budgets of \$77.2 million and \$95.2 million in 2014 and 2013, respectively.¹³ An audit for 2013-2014 states that GRU's capital assets as of September 2014 increased to \$2.2 billion, noting that the 82% increase in net capital assets was primarily due to a capital lease related to a biomass plant.¹⁴ According to the audit, GRU's net financial position increased by \$16.8 million in 2012 but decreased by \$1.7 million and \$14.1 million in 2014 and 2013, respectively.¹⁵

There are 34 municipal electric utilities in Florida.¹⁶ GRU's residential electric utility rates in November 2015 were the highest in the state among municipal utility providers.¹⁷

The City of Gainesville's charter provides that the city commission appoints an at-will general manager for utilities who is responsible to the city commission and who is responsible for the efficient administration of the utility system.¹⁸ The city commission is comprised of seven members: four elected from single member districts, two elected at-large, and one who is elected as mayor.¹⁹

The charter sets forth the general manager's powers and duties, which provide that the general manager is:²⁰

- Responsible for and has exclusive management jurisdiction and control over operating and financial affairs of the utility system including, but not limited to, the planning, development, production, purchase, sale, exchange, interchange, transmission and distribution of all electricity; the planning, development, purchase, sale, exchange, interchange, transmission and distribution of all natural gas; the planning, development, supply, treatment, transmission, distribution and sale of all potable water; and the planning, development, collection, treatment, disposal and billing of all wastewater now or hereafter provided by the city;
- Required to submit to the city commission for its consideration a yearly budget for the operation of the utility system;
- The purchasing agent for all equipment, materials, supplies and services necessary for operating and maintaining the utility system subject to policies promulgated by the commission;
- Required to propose ordinances to designate the job titles of subordinates that are to be considered directors of department;
- Required to appoint and, except as otherwise provided in this charter, remove all directors of departments at will;
- Required to recommend to the city commission all measures necessary and expedient for the proper governance and management of the utility system;
- Required to keep the city commission fully advised as to the management, governance and needs of the utility system; and

¹¹ Gainesville Area Chamber of Commerce, *A Gainesville Solution: Energy Competitiveness Report* (November 2013), at 41.

¹² About GRU, available at <https://www.gru.com/AboutGRU.aspx> (last visited Jan. 17, 2016).

¹³ Gainesville Regional Utilities, September 30, 2013 and 2012, Report of Independent Certified Public Accountant, Ernst & Young LLP, available at <https://www.gru.com/Portals/0/Legacy/Pdf/AboutGRU/2012-2013AuditedFinancialStatement.pdf> (last visited Jan. 17, 2016).

¹⁴ Gainesville Regional Utilities, September 30, 2014 and 2013, Financial Statement and Independent Auditors' Report, Purvis Gray & Company, available at <https://gainesville.legistar.com/LegislationDetail.aspx?ID=2211585&GUID=55D68315-98BC-43E9-AB20-F8988B4C98E3&Options=&Search> (last visited Jan. 17, 2016), at p. 8.

¹⁵ *Id.* at p. 5.

¹⁶ Florida Municipal Electric Association, Florida Municipal Utility Map, available at <http://publicpower.com/florida-municipal-utility-map/> (last visited Jan. 17, 2016).

¹⁷ Florida Municipal Electric Association, Florida Electric Bill Comparisons, available at <http://publicpower.com/electric-rate-comparisons/> (last visited Jan. 17, 2016).

¹⁸ City of Gainesville Charter, Art. III, s. 3.06.

¹⁹ City of Gainesville, *City Commission*, available at <http://www.cityofgainesville.org/CityCommission.aspx> (last visited Jan. 17, 2016).

²⁰ *Id.* at s. 3.06(2)(a)-(h).

also notes that the Orlando Utilities Commission board appoints its own members from a pool of candidates identified by a city nominating committee,³⁴ and that Lakeland Electric has a Commission/Customer Committee Hybrid.³⁵ The report states that the City of Tallahassee has a City Commission governance model.³⁶ According to the report, Florida cities with an appointed utility authority “are more competitive than Gainesville in commercial and industrial customer class electricity costs,” noting that Jacksonville, Orlando, Kissimmee, Fort Pierce, and New Smyrna Beach each have an appointed utility authority and that “[c]ommercial and industrial customer class electricity costs in those cities are significantly lower than in Gainesville.”³⁷

Effect of Proposed Changes

The bill repeals Section 3.06 of Article III of the City of Gainesville’s charter.³⁸ The section authorized the city commission to appoint a general manager for utilities. Since the bill makes the selection of the general manager for GRU a power of the Gainesville Regional Utilities Authority (Authority), this provision would be obsolete. Article 7.07(3) of the charter, however, provides that the current general manager appointed by the city shall be retained as the CEO/GM absent action by the Authority.

The bill amends the City of Gainesville charter by adding an article establishing the Gainesville Regional Utilities Authority. The following chart summarizes the provisions included in the charter amendment.

ARTICLE VII GAINESVILLE REGIONAL UTILITIES AUTHORITY	
7.01 Establishment	
	<ul style="list-style-type: none"> • Creates a regional utilities commission, named the “Gainesville Regional Utilities Authority (Authority)” • Provides that GRU will be governed by the Authority after the effective date of Article VII • Authority operates as a unit of city government, but is “free from direction and control of the city commission and city charter officers” • List of express purposes for the Authority, including “otherwise having broad authority with respect to utilities” • Authority has power to make rules, policies, and regulations consistent with charter and applicable law to govern its internal operations
7.02 Definitions	
	<ul style="list-style-type: none"> • Definitions for the purpose of Article VII <ul style="list-style-type: none"> ◦ “authority,” “city,” “city commission,” “county,” “GRU,” “member,” “utilities.”
7.03 Authority members	
7.03(1)	<ul style="list-style-type: none"> • Five members, appointed by a majority vote of the city commission <ul style="list-style-type: none"> ◦ One member must be a residential customer with “substantial knowledge of GRU, its operations, and its history ◦ One member must be the owner or representative of a private, non-governmental customer consuming at least 10,000 kilowatt hours per month of electricity during the previous twelve months. ◦ Three members shall be “competent and knowledgeable in specific fields including, but not limited to, law, economics, accounting, engineering, finance, and energy” • Must be persons of recognized ability and good business judgment, as identified by the city commission
7.03(2)	<ul style="list-style-type: none"> • All members of the Authority must: <ul style="list-style-type: none"> ◦ Reside year-round within the Authority’s electric service territory

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 7.

³⁸ Ch. 12760 (1927), Laws of Fla., as amended by ch. 90-394, s. 1, Laws of Fla.

7.07(3)	• Sitting GM of GRU, absent further action by the Authority, shall be retained in office as CEO/GM ³⁹
7.07(4)	• Sitting member of the Authority may not be selected as CEO/GM
7.08 Removal and suspension of members	
7.08(1)	• A member may be removed or suspended in accordance with chapter 112, F.S.
7.08(2)	• A member may be removed for failure to maintain all voting qualification specified in section 7.03
7.08(3)	• A member who is the subject of a suspension or removal proceeding may not deliberate, debate, or vote on the matter
7.08(4)	• Suspension requires the votes of at least three members of the Authority
7.08(5)	• Removal or reinstatement requires the votes of at least three members of the Authority
7.09 General provisions	
7.09(1)	• City commission is required to create instruments necessary for the Authority to function in accordance with this article
7.09(2)	• Utilities-related ordinances, policies, rates, fees, rules, regulations, budgets, and other provisions previously adopted by the city commission are deemed adopted, reenacted, or assumed by the Authority • This provision does not affect the right of the Authority to make future changes • Repeals City of Gainesville and Alachua County charter provisions, ordinances, resolutions, decrees, and parts thereof, to the extent of conflict with this article
7.09(3)	• City of Gainesville and Alachua County are prohibited from charging a franchise, right-of-way, license, permit, tax, or usage fee to the Authority or GRU, unless allowed to do so by general law
7.09(4)	• Rights and privileges of any GRU employee, including the GM, as of the effective date of the article, are not impaired
7.09(5)	• Existing utility advisory boards created by the city commission may continue advising the commission, but may not have an advisory role as to the Authority, GRU, and the employees of the Authority and GRU
7.10 Powers and duties	
7.10(1)	• Authority's powers and duties are "no less extensive than those exercised by the city commission with respect to GRU as existed on January 1, 2016"
7.10(2)	• Authority may not enact rules disposing or selling GRU property that are more expansive than the rules applicable to the city commission as of January 1, 2016
7.10(3)	• Authority is authorized to exercise the power of eminent domain for utilities purposes
7.10(4)	• Authority inherits all powers directly or indirectly affecting and controlling GRU as of the effective date of the Article • Authority retains rights, claims, actions, orders, and legal or administrative proceedings involving Authority assets and property
7.10(5)	• No Authority member is individually responsible for Authority debts
7.10(6)	• Authority must develop an ethics policy and code of business conduct policy, aiming to achieve best practices for municipal utilities, and review those polices at least biennially

The bill provides that the chair of the Authority or his/her designee is authorized to execute documents required for the transition from the current management structure to the one implemented by the charter changes of the bill.

B. SECTION DIRECTORY:

³⁹ This language provides continuity in the period from March 2017 to Oct. 4, 2017, where the current GM position appointed by the city has been eliminated, but the governing board of the Authority has not yet taken office.

acquire, and construct such systems in the name of the City of Gainesville without consultation with or approval by the city commission. Because the bill does not specify any limits on the Authority's financing authority, it may be construed to authorize the Authority to issue general obligation bonds in the name of the City. Further, because the bill defines "utilities" to include utility systems that are acquired in the future, beyond those systems currently operated by GRU, it may be construed to authorize the Authority to enter new lines of utility business in the name of the City.

The bill refers to "voting member[s]" of the Authority in multiple instances, but does not contain any language creating non-voting members.

Article 7.03(1)(c) requires the appointment of three members who are "competent and knowledgeable in specific fields," but does not provide any criteria (such as a degree) for determining competence or knowledge.

Article 7.05 states that the necessary expenses of members shall be "paid in accordance with authority policy and procedures, subject to the approval of a majority of the members of the authority." It is unclear if only the policy and procedures concerning payments are subject to a majority vote, or if each individual expense payment requires board approval.

Article 7.10(1) states the Authority's powers and duties are "no less extensive" than those exercised by the city commission as of January 1, 2016. It is unclear who makes this determination. Article 7.10(2) is similarly ambiguous.

Article 7.10(4) appears to use the word "authority" in the dictionary sense. As the bill defines "authority" for the purpose of the article, this appears to create ambiguity.

Article 7.10(4) grants the Authority "all rights, claims, ... involving the authority immediately before the effective date of this article." Since the Authority did not exist before the effective date of the article, it is unclear what rights, claims, etc. the Authority would inherit.

Section 3 of the bill states that the chair of the authority or his/her designee is authorized to execute documents required for the transition. It is unclear who can or shall exercise these duties between the date of the referendum (March 2017) and the election of a chair on October 4, 2017.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES