



# MEMORANDUM

Office of the City Attorney

Phone: 334-5011/Fax 334-2229

Box 46

**TO:** Mayor and City Commissioners **DATE:** March 24, 2017

**FROM:** Nicolle M. Shalley, City Attorney *NMS*

**SUBJECT:** Impact statement and analysis of House Bill 759 and Senate Bill 1568 (2017) regarding governance of City of Gainesville Utilities

## Introduction

As directed at your regular City Commission Meeting on March 2, 2017, I worked with my fellow City Charter Officers (the City Manager, the General Manager for Utilities, the City Auditor, the Equal Opportunity Director and the Clerk of the Commission) to prepare this impact statement and analysis. As we have discussed with you, if House Bill 759 ("HB 759") or Senate Bill 1568 ("SB 1568") become law (i.e., is signed by the Governor) the Charter Officers expect that you will look to us and our respective staff for direction on how to implement the bill and to that end, it is helpful (regardless of whether one is "for" or "against" the bill) to identify the areas in which the bill is unclear and/or the areas in which the bill is anticipated to impact the City.

This Memorandum is based on facts and our professional opinions and every effort was made to avoid taking an advocacy position. In simple terms, we read the bills, together with provisions of the City Charter (that remain unaltered by the bills) and tried to figure out what this would cost the City and how we could make this could work if either bill becomes law.

## Background

On February 9, 2017, State Representative Chuck Clemons Sr., filed HB 759 to amend the City's Charter to significantly restructure governance and management of the City's electric, water, wastewater, reuse water, natural gas and communications utility assets. On March 2, 2017, State Senator Keith Perry filed SB 1568 which is largely similar in substance to HB 759. A copy of HB759 is attached to this Memorandum and line numbers in that bill are provided throughout this document for ease of reference.

If either one of the bills is approved by the Legislature and signed by the Governor, the following question is required to be placed on the March 2018 citywide election ballot: "Shall the Charter of the City of Gainesville be amended by creating the Gainesville Regional Utilities Authority as the governing board of Gainesville Regional Utilities and appointed by the City Commission of the City of Gainesville?" (lines 291-306)

If the referendum is approved by majority vote of qualified electors voting in that election, the act shall take effect – meaning the City is then required to implement the substantive provisions of the bill. The bill sets forth the following timeline for implementation: By July 2018, the City Commission must appoint the initial Authority members (lines 168-170) and by Wednesday,

October 4, 2018 (typo in HB 759 – should be Wednesday, October 3), the Authority shall hold its initial meeting in City Commission chambers (lines 192-193).

**Impact statement and analysis**

As a threshold issue – what do the substantive provisions of these bills create? It appears from the plain language of the bills and the ballot questions that they create: (1) a City governing board (referred to in the bill as the “Authority”) vested with final decision-making power to manage, operate and control the City’s utility assets (with one exception described in Issue 4 below), and (2) a utilities administrator (referred to in the bill as the “CEO/GM”) who works under the direction and supervision of the Authority.

The bills do not create a legal entity that is separate and distinct from the City, such as the Gainesville-Alachua County Regional Airport Authority.

We note that there are effectively no “checks and balances” on this Authority board. The bill grants them specified powers and duties (which are both under-inclusive and over-inclusive, such as “managing” and “operating” the utilities – powers typically exercised by management staff) but provides little guidance and direction in the performance of those duties, the voters have no authority over the Authority as they are not elected and the City Commission has no power over the Authority except the ability to remove members for certain cause (as discussed in Issue 7 below.) As a result, the City Commission should very carefully consider and evaluate its appointees to this Authority.

The below tables provide an impact statement (answering the same questions contained in the House of Representatives Economic Impact Statement Form) and an analysis of key issues in the bills – again, based on fact and our professional opinions. We note, as you will see below, that we found it difficult to quantify many fiscal impacts of these bills – as much of that will be solely determined by future action of the Authority. In addition, there are areas of analysis that require further involved work (such as determining the effect of these bills on existing debt, as discussed in Issue 2 below) and several areas where it appears simply unworkable (such as the Authority setting only salaries and the City Commission setting all other terms and conditions of employment, as discussed in Issue 10 below.)

<b>Impact Statement</b>	
<b>Revenue Increase or Decrease due to bill</b>	<p>Cannot be ascertained. Future action by the Authority will determine such outcomes. The bill provides no guidance or direction to the Authority in this regard. For example, the Authority could lower or raise utility rates, they could lower or raise the general fund transfer, they could use all excess revenues generated to improve utilities systems or defer improvements to provide rate decreases.</p> <p>The future actions by the Authority with respect to the general fund</p>

	transfer will likely impact actions by the City Commission (as described in Issue 1 below)
<p><b>Cost of Implementation and Administration</b></p>	<p><u>Basic Implementation:</u> Since the bill does not create a separate legal entity, basic implementation appears to consist of:</p> <p>(1) City Commission appointing the Authority members (cost – mostly time - to broadly recruit and carefully evaluate applicants by both the Clerk’s Office and the Commission),</p> <p>(2) City Commission amending the employment agreements with the Charter Officers, excluding the General Manager for Utilities (as discussed in Issue 9 below) to provide reporting relationship to the Authority (cost – time and money to be determined through negotiations),</p> <p>(3) City Commission amending the employment agreement with the General Manager for Utilities (as discussed in Issue 8 below) to serve as the interim CEO/GM of the Utilities (cost- time and money to be determined through negotiations),</p> <p>(4) Authority appointing a permanent CEO/GM (cost – time and money - if the Authority undertakes a nationwide search, approximately \$110,000 for a process that includes search, interview and relocation expenses; if the Authority hires a new CEO/GM, salary will be negotiated and City Commission may be left to terminate the General Manager for Utilities employment and pay severance pursuant to his existing contract estimated at \$110,384; if the Authority hires the existing General Manager for Utilities, his existing contract could be amended to provide new salary and benefits negotiated with the Authority.)</p> <p><u>Further Implementation and Administration:</u> Cannot be ascertained. Future action by the Authority and the permanent CEO/GM will determine such costs. As will other issues, such as Issue 2 identified below, which will require retention of outside professionals to determine the appropriate course of action, which may include debt restructuring.</p>
<p><b>Funding Sources</b></p>	<p>No funding sources are identified to implement the bill. It appears utilities systems revenues would need to be generated or reallocated in future budgets to cover such costs. Utilities systems revenues and assets will be used by the Authority to fund all utility operations. The bill grants the Authority the power to set rates and issue revenue bonds, but not other forms of debt.</p>

<b>Economic Advantages or Disadvantages created by the bill</b>	Cannot be ascertained. Future action by the Authority will determine such outcomes. The bill provides no guidance or direction to the Authority in this regard. For example, the Authority could lower or raise rates, they could lower or raise the general fund transfer, they could use all excess revenues generated to improve utilities systems or defer improvements to provide rate decreases.
<b>Impact of bill on present governmental services</b>	<p><u>Internal</u>: Cannot be ascertained. Future action by the Authority and the new CEO/GM will determine such outcomes. For example, as to shared services within the City (such as Information Technology and Human Resources), such services could be separated or even more services could be consolidated and shared.</p> <p><u>External</u>: Cannot be ascertained. Authority members with “expertise”, longer terms, no pay, fully independent of the City Commission, appointed (vs. elected) status with removal only for “cause” -- may lead to more informed decision-making by a board that is solely focused on utilities matters or it may lead to less accountable decision-making.</p>

<b>Analysis of Key Issues in Bill</b>	
<b>Summary of bill language</b>	<b>Analysis</b>
<p><b>Issue 1: Budget and General Fund Transfer (GFT) (lines 99-106)</b></p> <p>The Authority must submit a budget that includes the amount of the GFT to the City Commission by July 1st of each year. The Commission has no role with respect to the Authority budget. In its budget, the Authority may reduce the amount of the GFT each year by up to 3% from the previous fiscal year.</p>	<p>The July 1 date is problematic, because the City budget includes the utilities budget – with much budget planning done far in advance of July 1 and statutory deadlines in September for the City Commission to adopt final budget resolutions, assessment resolutions and fee ordinances. This would leave only the month of August for the City Commission to hold public meetings and adjust (based on the utilities budget submitted by the Authority) and balance the City budget as required by law.</p> <p>Any potential reduction of the GFT is significant for the City, as the GFT is the City’s largest general fund revenue source (the GFT currently provides 38% of the City’s revenues, followed by property taxes at 23%). In FY2016-2017, the GFT was \$35.8 million (net the \$1.4 million reduction for GREC property taxes.)</p>

	<p>By way of example, if the Authority reduces the GFT the first year by 3% (as it is allowed, but not required to do) the GFT will be reduced by \$1.1 million that year. The City Commission will then have to decide whether to reduce expenses or increase property taxes or assessments, fees, or find other lawful revenue sources.</p>
<p><b>Issue 2: Existing Debt</b></p> <p>The bill is silent</p>	<p>This will require City bond counsel, financial professionals and finance staff to carefully review existing (of which there are many) operative Resolutions, Agreements and Covenants to determine whether any defaults or obligations are triggered by the removing the City Commission as the governing body and inserting a new governing body.</p>
<p><b>Issue 3: New Debt (lines 87-95) and bond ratings</b></p> <p>The Authority can issue revenue bonds and cannot issue general obligation bonds</p>	<p>The Authority is not given the power to issue debt other than revenue bonds. Although not stated in the bill, since the Authority powers extend only to utilities assets, presumably the Authority can pledge only utilities system revenues in issuance of revenue bonds, with no recourse to other City revenues.</p> <p>The effect on bond ratings will be determined by the actions of the Authority, the concerns of bond investors are principally, the history/track record of the governing body and the willingness of the governing body to set rates to recover costs.</p>
<p><b>Issue 4: Role, powers, duties of Authority (lines 34-44, lines 64-112)</b></p> <p>The Authority is granted both broad powers - “managing, operating, and controlling” the utilities owned by the City “free from direction and control of the Gainesville City Commission” and specific listed powers.</p> <p>The one stated limitation on Authority power is that it can only recommend to the City Commission “the acquisition and operation of a utility system not owned or operated by GRU as of the date of transfer</p>	<p>As noted above, the powers appear over-inclusive (such as managing the utility) and under-inclusive (such as not addressing the ability to sue and be sued in the name of the City)</p> <p>One of the specific powers granted is that the Authority can dispose of utility system assets pursuant to section 5.04 of the City Charter (which requires approval of an ordinance after voter referendum); the problem with this is that the Authority is not (and cannot be) vested with legislative powers (such as the power to adopt an ordinance), as legislative powers can only be exercised by an elected body, pursuant to Article VIII, Section 2 of the Florida Constitution.</p>

<p>of governing authority to the authority.”</p>	
<p><b>Issue 5: Fiduciary duties of Authority members (lines 117-119, lines 79-80) and liability created by the Authority in the name of the City</b></p> <p>Authority members must perform official duties “in the best interest of GRU and its customers”</p>	<p>This language requires revision, GRU is simply a fictitious name and no business performs solely in the best interest of the customers or it would cease to exist.</p> <p>The bill is silent on any duties owed to the City, and does not address the reality that, as a unit of City government, the Authority is creating very real liability in the name of the City (e.g., entering into contracts, conducting business operations, presumably suing and being sued) and title to all utility assets remain vested in the City. The Authority members must have, and owe, fiduciary and other duties to the corporate entity they serve – the City of Gainesville.</p>
<p><b>Issue 6: Board Composition (lines 114-158)</b></p> <p>The City Commission must appoint 5 Authority members “of recognized ability and good business judgment” as follows:</p> <ul style="list-style-type: none"> <li>• One residential customer with “substantial knowledge of GRU, its operations, and its history”</li> <li>• One private non-government customer (the owner or a representative) consuming at least 10,000 kwh per month of electric usage during each of the previous 12 months</li> <li>• Three members “competent and knowledgeable in one or more specific fields substantially related to the duties and functions of the authority, including, but not limited to, law, economics, accounting, engineering, finance or energy.”</li> </ul> <p>All five members must (a) maintain a primary residence in the electric service territory of the utility, (b) be a customer of the electric utility, and (c) have not been convicted of a felony.</p>	<p>As noted above and below, the bill provides little direction to or limitation on the Authority in the exercise of its powers and duties. The Authority is not accountable to the voters and, once appointed; the City Commission has limited power to remove Authority members. As such, using the criteria in the bill and other non-conflicting criteria the City Commission may develop, the City Commission should very carefully consider and evaluate its appointees to this Authority.</p>

<p>Four members shall be qualified electors of the City and one member shall be a resident of the unincorporated county or another city; however, at the point in time when the ratio of electric meters outside City boundaries reaches 40% of total meters, the next appointee must be a resident from outside the City boundaries.</p>	
<p><b>Issue 7: Removal or Suspension of Authority members (lines 210-216)</b></p> <p>The City Commission can only remove Authority members after adopting a resolution specifying facts sufficient to advise the member of one of the below stated basis for his/her suspension or removal and after reasonable notice to the member and providing an opportunity for the member to be heard by the City Commission:</p> <p>(a) suspend or remove for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, or permanent inability to perform his or her official duties.</p> <p>(b) suspend if arrested for a felony or for a misdemeanor related to the duties of office or who is indicted or informed against for the commission of any federal felony or misdemeanor or state felony or misdemeanor.</p> <p>(c) remove if convicted of a federal felony or misdemeanor or state felony or misdemeanor. For the purposes of this subsection, any person who pleads guilty or nolo contendere or who is found guilty shall be deemed to have been convicted, notwithstanding a suspension of sentence or a withholding of adjudication.</p> <p>(d) remove for failure to maintain the qualifications criteria.</p>	<p>The City Commission must understand that they cannot remove Authority members simply because (in the opinion of the voters or the City Commission) the Authority is exercising bad judgment, or issuing too much debt, or raising rates and spending a great deal on utility infrastructure, or lowering rates and spending little on utilities infrastructure.</p> <p>This does insulate Authority decision-making, which as noted above, may lead to more informed decision-making by a board that is solely focused on utilities matters or it may lead to less accountable decision-making.</p>
<p><b>Issue 8: Role of General Manager for Utilities (lines 26-27, lines 230-237)</b></p>	<p>The bill appears to make the Authority the manager of the utility, and the CEO/GM serves as an</p>

<p>The General Manager for Utilities position is deleted as a city charter officer and role is reduced to a CEO/GM to “direct and administer” utility functions. The CEO/GM serves at the pleasure of the Authority. The bill requires the current General Manager for Utilities to serve as the interim CEO/GM, until the Authority appoints a new CEO/GM.</p>	<p>administrator carrying out the management directions provided by the Authority. In addition, the bill contains no provision, like City Charter Section 2.10, that limits the Authority from interfering with the independence of the CEO/GM in the performance of his/her duties.</p> <p>As discussed above, the current General Manager works under an employment agreement with the City, reporting to the City Commission. Since the bill changes that entirely, amendments to his employment agreement would need to be negotiated to cover interim duties and responsibility to report solely to the new Authority, and not to the City Commission.</p> <p>In addition, if the Authority hires a different person as the permanent CEO/GM, the City Commission may be left to terminate the General Manager’s employment agreement and pay severance as provided therein (cost approximately \$110,384); alternatively, if the Authority hires the existing General Manager, his agreement could possibly be amended to provide his new salary and benefits negotiated with the Authority.</p>
<p><b>Issue 9: Role of the Other City Charter Officers – City Manager, Equal Opportunity Director, Auditor, Clerk and City Attorney</b></p> <p>The bill is silent and does not amend the Charter with respect to these positions.</p>	<p>As set forth in the City Charter, each Charter Officer is vested with particular authority and professional independence to serve the entire City government and is a direct report to, and serves at the will of, the City Commission.</p> <p>Each Charter Officer has an employment agreement with the City that is approved by, and can be terminated by, the City Commission.</p> <p>The first issue is that the City, after this bill, will now be comprised of two governing bodies (the City Commission and the Authority.) To function, each Charter Officer will need to report to both governing bodies. As such, amendments will need to be negotiated to the existing employment agreements with each Charter Officer to provide for reporting responsibility to the Authority.</p> <p>A second issue is that absent a Charter amendment,</p>



	<p>the Authority cannot limit the authority of any Charter Officer or be given the right to terminate the employment of any Charter Officer. This issue should be made very clear from the beginning in order to avoid the tension that may result when the Authority is displeased with a Charter Officer and is unable to retain their own such professional, because the Charter precludes them from doing so.</p>
<p><b>Issue 10: Status of utilities employees/labor and employment issues (lines 238-252)</b></p> <p>The Authority fixes the salary of the CEO/GM and the CEO/GM fixes the salaries of all other employees (which remain City employees) under his/her direction.</p> <p>The bill states that “the sitting general manager of GRU, as well as all officers and employees of the city who, by virtue of this article, become subject to the supervision and direction of the CEO/GM, shall continue without any loss of rights or benefits as employees under the pension plans and civil service merit system of the city existing as of the creation of the authority.”</p>	<p>This is problematic, and potentially unlawful, if it results in employees in the same job classification working for the City (one in the utility unit and one in a non-utility unit) receiving different pay.</p> <p>The bill is silent as to other terms and conditions of employment, such as benefits and hours, and therefore the City Commission would retain control over those. Under state law, the City Commission is vested with the authority to approve all collective bargaining agreements, which include salary. Many City utility employees are members of a collective bargaining unit.</p> <p>These provisions of the bill that bifurcate salaries from all other terms and conditions of City employment appear unworkable.</p> <p>In addition, it is unclear how the sitting General Manager can become subject to the supervision and direction of the new CEO/GM, it is unclear whether the language is intended to vest currently unvested members of the pension system, or is intended to limit the City Commission’s ability to amend the pension (with respect to utility employees) in the future and it is unclear what is meant by the “civil service merit system of the city.”</p>
<p><b>Issue 11: Sunshine Law (lines 202-206)</b></p> <p>Provides that all meetings of the Authority shall be open to the public “except that meetings related to settlement of then existing litigation may be held as allowed by law.”</p>	<p>This does not recognize or allow for other specific exemptions that are provided by State law.</p>
<p><b>Issue 12: Status of utility related</b></p>	<p>As noted above, the non-elected Authority does not</p>

<p><b>ordinances, etc.. (lines 260-271)</b></p> <p>The bill provides for the continued effect of city ordinances, policies, rates, fees, etc... until the Authority modifies any such document.</p>	<p>have (and cannot have) legislative power, so they cannot adopt or amend City ordinances. It is unclear how they would have the authority to enforce City utility ordinances, nor would the Commission have the authority to enforce City utility ordinances either.</p> <p>It would appear, the Authority would need to very quickly review all utility ordinances and provide for such matters, as it chooses, in its own (non-ordinance) documents and request the City Commission repeal its utility-related ordinances, since the bill leaves the Commission with no further power over the utility.</p>
<p><b>Issue 13: Utility Advisory Board (lines 279-280)</b></p> <p>The current Utility Advisory Board “has no role with respect to the Authority.”</p>	<p>The City Commission would need to adopt an ordinance repealing the Utility Advisory Board and dismissing its members.</p>

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A bill to be entitled  
 An act relating to the City of Gainesville, Alachua  
 County; amending ch. 12760, Laws of Florida (1927), as  
 amended by ch. 90-394, Laws of Florida, relating to  
 the city's charter; repealing section 3.06 of the  
 city's charter, relating to the appointment,  
 qualifications, powers, and duties of the general  
 manager for utilities of Gainesville Regional  
 Utilities; creating the Gainesville Regional Utilities  
 Authority and establishing it as the governing board  
 of Gainesville Regional Utilities; providing  
 definitions; specifying the powers and duties of the  
 authority; specifying the composition of the authority  
 and the selection and removal, terms, compensation,  
 organization, and liability of its members; specifying  
 certain management and personnel for the authority;  
 specifying applicability to certain city ordinances,  
 policies, rates, fees, assessments, charges, rules,  
 regulations, budgets, and contracts; requiring the  
 authority to develop and review an ethics policy and  
 code of conduct; providing a ballot statement;  
 requiring a referendum; providing an effective date.

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

26           Section 1. Section 3.06 of Article III of section 1 of  
 27 chapter 90-394, Laws of Florida, is repealed.

28           Section 2. Article VII is added to chapter 12760, Laws of  
 29 Florida (1927), as amended by chapter 90-394, Laws of Florida,  
 30 to read:

31  
 32                     ARTICLE VII GAINESVILLE REGIONAL UTILITIES AUTHORITY  
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34           7.01 Establishment.—There is created a regional utilities  
 35 authority to be known as the "Gainesville Regional Utilities  
 36 Authority." Gainesville Regional Utilities shall be governed by  
 37 the authority upon installation of the authority's members  
 38 pursuant to this article. The authority shall operate as a unit  
 39 of city government and, except as otherwise provided in this  
 40 article, shall be free from direction and control of the  
 41 Gainesville City Commission. The authority is created for the  
 42 express purpose of managing, operating, controlling, and  
 43 otherwise having broad authority with respect to the utilities  
 44 owned by the City of Gainesville.

45           7.02 Definitions.—For the purposes of this article, unless  
 46 otherwise designated or the context otherwise requires, the  
 47 following terms have the following meanings:

48           (1) "Authority" means the Gainesville Regional Utilities  
 49 Authority created in this article.

50           (2) "City" means the City of Gainesville.

51        (3) "City commission" means the Gainesville City  
52 Commission.

53        (4) "County" means Alachua County.

54        (5) "Customer" means a person or entity that makes  
55 application for and is supplied with service by GRU for its  
56 ultimate use.

57        (6) "GRU" means Gainesville Regional Utilities.

58        (7) "Member" means a member of the authority.

59        (8) "Utilities" means the electric utility system, water  
60 utility system, wastewater utility system, reuse water utility  
61 system, natural gas utility system, communications utility  
62 system, and such other utility systems as may be acquired by GRU  
63 in the future.

64        7.03 Powers and duties.—

65        (1) The authority shall have all of the following powers  
66 and duties, in addition to the powers and duties otherwise  
67 conferred by this article:

68        (a) To manage, operate, and control the utilities and to  
69 do all things necessary to effectuate an orderly transition of  
70 the management, operation, and control of the utilities from the  
71 city to the authority, consistent with this article.

72        (b) To establish and amend the rates, fees, assessments,  
73 charges, rules, regulations, and policies governing the sale and  
74 use of services provided through the utilities.

75        (c) To acquire real or personal property and to construct

76 such projects as necessary to operate, maintain, enlarge,  
 77 extend, preserve, and promote the utility systems in a manner  
 78 that will ensure the economic, responsible, safe, and efficient  
 79 provision of utility services, provided that title to all such  
 80 property is vested in the city.

81 (d) To exercise the power of eminent domain pursuant to  
 82 part IV of chapter 166, Florida Statutes, and to use utility  
 83 funds to appropriate or acquire property, excluding federal or  
 84 state property, for the purpose of obtaining, constructing, and  
 85 maintaining utility facilities, provided that title to all such  
 86 property is vested in the city.

87 (e) To issue revenue bonds, upon resolution of the  
 88 authority establishing the form, terms, and purpose of such  
 89 bonds, for the purpose of financing or refinancing utility  
 90 system projects, and to exercise all powers in connection with  
 91 the authorization, issuance, and sale of such bonds as conferred  
 92 upon municipalities by part II of chapter 166, Florida Statutes,  
 93 provided that such bonds may be validated in accordance with  
 94 chapter 75, Florida Statutes. The authority may not issue  
 95 general obligation bonds.

96 (f) To dispose of utility system assets only to the extent  
 97 and under the conditions that the city commission may dispose of  
 98 such assets pursuant to section 5.04 of Article V.

99 (g) To prepare and submit to the city commission, at least  
 100 3 months before the start of the city's fiscal year, an annual

101 budget for all authority and GRU operations, including the  
 102 amount of any transfer to the city. The term of the budget shall  
 103 coincide with the city's fiscal year. Absent prior approval of  
 104 the city commission, the authority's budget may not reduce the  
 105 amount of any transfer to the city by more than 3 percent from  
 106 the previous fiscal year.

107 (h) To appoint and remove a chief executive  
 108 officer/general manager as provided in this article.

109 (i) To recommend, by resolution to the city commission,  
 110 the acquisition and operation of a utility system not owned or  
 111 operated by GRU as of the date of transfer of governing  
 112 authority to the authority.

113 7.04 Authority members.-

114 (1) There shall be five members of the authority appointed  
 115 by a simple majority vote of the city commission. Each member  
 116 shall be a person of recognized ability and good business  
 117 judgment, as identified by the city commission, who is expected  
 118 to perform his or her official duties in the best interests of  
 119 GRU and its customers. Appointments shall be made as follows:

120 (a) One member shall be a residential customer with  
 121 substantial knowledge of GRU, its operations, and its history.

122 (b) One member shall be a private, nongovernment customer  
 123 consuming at least 10,000 kilowatt hours per month of electric  
 124 usage during each of the previous 12 months. If the customer is  
 125 an entity, this member may be the owner or representative of

126 such customer.

127 (c) Three members shall be competent and knowledgeable in  
 128 one or more specific fields substantially related to the duties  
 129 and functions of the authority, including, but not limited to,  
 130 law, economics, accounting, engineering, finance, or energy.

131 (2) All members of the authority shall:

132 (a) Maintain primary residence within the electric service  
 133 territory of GRU's electric utility system.

134 (b) Be a customer of GRU electric utility system at all  
 135 times during the term of appointment.

136 (c) Not have been convicted of a felony as defined by  
 137 general law.

138 (d) Be a qualified elector of the city, except that a  
 139 minimum of one member must be a resident of the unincorporated  
 140 area of the county or a municipality in the county other than  
 141 the City of Gainesville.

142 (3) The composition of the authority shall be adjusted  
 143 upon expiration of any member's term, or upon any authority  
 144 vacancy, to reflect the ratio of total electric meters serving  
 145 GRU electric customers outside the city's jurisdictional  
 146 boundaries to total electric meters serving all GRU electric  
 147 customers. For example, upon expiration of a member's term or  
 148 upon an authority vacancy, if the ratio of total electric meters  
 149 serving customers outside the city boundaries to total electric  
 150 meters serving all electric customers reaches 40 percent, the



151 city commission must appoint a second member from outside the  
 152 city boundaries to serve the next term that would otherwise be  
 153 served by a qualified elector of the city. Conversely, upon  
 154 expiration of any member's term or upon any authority vacancy,  
 155 if the ratio subsequently falls below 40 percent, the city  
 156 commission must appoint a qualified elector of the city to serve  
 157 the next term that otherwise would have been served by a  
 158 resident from outside the city boundaries.

159 (4) Until January 1, 2022, a current or former elected  
 160 official of the city or county having held office after January  
 161 1, 2000, may not become a member, except that a member initially  
 162 appointed to the authority may be considered for subsequent  
 163 reappointment if such individual remains otherwise qualified and  
 164 chooses to be considered for reappointment.

165 (5) A member who is appointed for three full consecutive  
 166 4-year terms may not succeed herself or himself.

167 7.05 Member terms.—

168 (1) The city commission shall appoint initial members to  
 169 the authority within 120 calendar days after the approval at  
 170 referendum of the creation of this article. The initial terms of  
 171 office for the five members shall commence at 12 a.m. on October  
 172 1, 2018. The terms of the initial appointments shall be as  
 173 follows: one member shall be designated to serve until 12 a.m.  
 174 October 1, 2019; one member shall be designated to serve until  
 175 12 a.m. October 1, 2020; one member shall be designated to serve

176 until 12 a.m. October 1, 2021; and two members shall be  
 177 designated to serve until 12 a.m. October 1, 2022. Members  
 178 appointed for subsequent terms shall be appointed for 4-year  
 179 terms commencing at 12 a.m. on October 1 of the year in which  
 180 they are appointed. If a member is appointed to complete an  
 181 unexpired term, the member's term shall commence at the time of  
 182 appointment and shall continue through the remainder of the  
 183 unexpired term.

184 (2) The city commission shall fill any vacancy for the  
 185 unexpired portion of a term within 60 days after the vacancy  
 186 occurs if the remainder of the term exceeds 90 days.

187 7.06 Member compensation.—Members of the authority shall  
 188 serve without compensation but may receive reimbursement for per  
 189 diem and travel expenses incurred in the performance of their  
 190 duties, as provided in s. 112.061, Florida Statutes.

191 7.07 Authority; oath; organization; and meeting.—

192 (1) The authority shall initially meet at the chambers of  
 193 the city commission at 6 p.m. on Wednesday, October 4, 2018.

194 (2) Before taking office for any term, each member shall  
 195 be given an oath or affirmation by the mayor or his or her  
 196 designee similar to the oath or affirmation required of a member  
 197 of the city commission.

198 (3) The first official action of the authority shall be  
 199 election of a chairperson and a vice chairperson from among its  
 200 membership.

201       (4) The authority shall meet at least once each month,  
 202 except in case of unforeseen circumstances. All meetings of the  
 203 authority shall be noticed and open to the public, and minutes  
 204 shall be kept as required by law, except that meetings related  
 205 to settlement of then existing litigation may be held as allowed  
 206 by law.

207       (5) The GRU general manager or his or her designee shall  
 208 be responsible for making arrangements for and providing  
 209 adequate notice of the initial meeting of the authority.

210       7.08 Removal and suspension of members.—

211       (1) A member may be removed or suspended from office by  
 212 the city commission in accordance with s. 112.501, Florida  
 213 Statutes. In addition to the grounds for removal set forth  
 214 therein, a member may be removed by the city commission for  
 215 failure to maintain the qualifications specified in section  
 216 7.04.

217       (2) The authority may recommend to the city commission  
 218 that a member be removed or suspended from office if it finds,  
 219 by vote of at least three members, a reasonable basis for  
 220 removal or suspension on one or more of the grounds set forth in  
 221 s. 112.501, Florida Statutes, or for failure to maintain the  
 222 qualifications specified in section 7.04. The authority shall  
 223 give reasonable notice of any proceeding in which such action is  
 224 proposed and must provide the member against whom such action is  
 225 proposed a written statement of the basis for the proposed

226 action and an opportunity to be heard. The member against whom  
 227 such action is proposed may not participate in the authority's  
 228 debate or vote on the matter.

229 7.09 Management and personnel.-

230 (1) A chief executive officer/general manager (CEO/GM)  
 231 shall direct and administer all utility functions, subject to  
 232 the rules and resolutions of the authority. The CEO/GM shall  
 233 serve at the pleasure of the authority. Appointment or removal  
 234 of the CEO/GM shall be by majority vote of the authority. Until  
 235 the authority appoints a CEO/GM, the sitting general manager of  
 236 GRU shall serve as the CEO/GM. A sitting member of the authority  
 237 may not be selected as the CEO/GM.

238 (2) All officers and employees of the city who serve under  
 239 the supervision and direction of the sitting general manager of  
 240 GRU shall serve under the CEO/GM. The CEO/GM shall have the  
 241 exclusive authority to hire, transfer, promote, discipline, or  
 242 terminate employees under his or her supervision and direction.

243 (3) The authority shall fix the salary of the CEO/GM, and  
 244 the CEO/GM shall fix the salaries of all other employees who  
 245 serve under his or her direction consistent with the annual  
 246 budget approved by the authority. The sitting general manager of  
 247 GRU, as well as all officers and employees of the city who, by  
 248 virtue of this article, become subject to the supervision and  
 249 direction of the CEO/GM, shall continue without any loss of  
 250 rights or benefits as employees under the pension plans and

251 civil service merit system of the city existing as of the  
 252 creation of the authority.

253 7.10 General provisions.-

254 (1) The city and the authority shall perform all acts  
 255 necessary and proper to effectuate an orderly transition of the  
 256 governance, operation, management, and control of the utilities  
 257 to the authority, including, but not limited to, the creation of  
 258 such instruments as are necessary for the authority to function  
 259 in accordance with this article.

260 (2) All city ordinances, policies, rates, fees,  
 261 assessments, charges, rules, regulations, and budgets related to  
 262 operation of the utilities shall remain in effect until the  
 263 authority, pursuant to the powers granted in this article,  
 264 modifies any such item. If any city charter provision,  
 265 ordinance, resolution, decree, or any part thereof conflicts  
 266 with the provisions of this article, the provisions of this  
 267 article shall govern. This subsection is not intended to and may  
 268 not interfere with existing contractual arrangements between the  
 269 city and county, regardless of whether such arrangements are  
 270 reflected in charter provisions, ordinances, resolutions,  
 271 decrees, or any part thereof.

272 (3) All rights, responsibilities, claims, and actions  
 273 involving GRU as of the transfer to the authority shall  
 274 continue, except as may be modified by the authority under the  
 275 powers granted by this article and consistent with law.

276       (4) A franchise, right-of-way, license, permit, or usage  
 277 fee or tax may not be levied by the city upon the authority or  
 278 the utilities unless allowed by general law.

279       (5) Any utility advisory board created by the city  
 280 commission has no role with respect to the authority.

281       (6) A member of the authority is not individually  
 282 responsible for authority debts or liabilities.

283       (7) The authority shall develop an ethics policy and a  
 284 code of business conduct that shall be reviewed at least  
 285 biennially.

286       Section 3. In order to provide for the transitional  
 287 administrative needs and orderly compliance with the provisions  
 288 of this act, the chairperson of the authority or his or her  
 289 designee is authorized to execute documents required for the  
 290 transition.

291       Section 4. Referendum.—At the special referendum election  
 292 called pursuant to this act, the ballot question shall read as  
 293 follows:

294  
 295 "Shall the Charter of the City of Gainesville be amended by  
 296 creating the Gainesville Regional Utilities Authority as the  
 297 governing board of Gainesville Regional Utilities and appointed  
 298 by the City Commission of the City of Gainesville?"

299       Yes....

300       No....

301 Section 5. This act shall take effect only upon its  
 302 approval by a majority vote of those qualified electors of the  
 303 City of Gainesville voting in a referendum to be held in March  
 304 2018 in conjunction with the citywide election to be held in the  
 305 City of Gainesville, except that this section and section 4  
 306 shall take effect upon becoming a law.