

CHAPTER 2023-348

Committee Substitute for House Bill No. 1645

An act relating to the City of Gainesville, Alachua County; amending chapter 12760, Laws of Florida (1927), as amended by chapter 90-394, Laws of Florida, relating to the City's charter; repealing section 3.06 of the charter, relating to 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 an effective date.

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

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 Section 3.06 of Article III of section 1 of chapter 90-394, Laws of Florida, is repealed.

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

ARTICLE VII

GAINESVILLE REGIONAL UTILITIES AUTHORITY

7.01 Establishment.—

There is created a regional utilities authority to be known as the “Gainesville Regional Utilities Authority” (“Authority”). Gainesville Regional Utilities shall be governed by the Authority upon installation of the Authority's members pursuant to this article. The Authority shall operate as a unit of city government and, except as otherwise provided in this article, shall be free from direction and control of the Gainesville City Commission. The Authority is created for the express purpose of managing, operating, controlling, and otherwise having broad authority with respect to the utilities owned by the City of Gainesville.

7.02 Definitions.—

For the purposes of this article, unless otherwise designated, or the context otherwise requires, the following terms have the following meanings:

(1) “Authority” means the Gainesville Regional Utilities Authority created in this article.

(2) “City” means the City of Gainesville.

(3) “City Commission” means the Gainesville City Commission.

(4) “County” means Alachua County.

(5) “Customer” means a person or an entity that makes application for and is supplied with service by GRU for its ultimate use.

(6) “Flow of funds” means the sum of required debt service, necessary operations and management expenses, a reasonable contribution to a utility plan improvement fund, identified SLA-related losses, and any other lawful purpose as provided in bond covenants.

(7) “Government services contribution” or “GSC” means the portion of revenues generated from rates, fees, assessments, and charges for the provision of utility services by the utility system which is annually transferred by the Authority to the City for use in funding or financing its general government municipal functions.

(8) “GRU” means Gainesville Regional Utilities.

(9) “Member” means a member of the Authority.

(10) “Net revenues” means the gross revenues less fuel revenues.

(11) “Service-level agreement” or “SLA” means a contract entered into by the Authority that establishes a set of deliverables that one party has agreed to provide another.

(12) “Utilities” means the electric utility system, water utility system, wastewater utility system, reuse water utility system, natural gas utility system, communications utility system, and such other utility systems as may be acquired by GRU in the future.

7.03 Powers and duties.—

(1) The Authority shall have the following powers and duties, in addition to the powers and duties otherwise conferred by this article:

(a) To manage, operate, and control the utilities, and to do all things necessary to effectuate an orderly transition of the management, operation, and control of the utilities from the City to the Authority, consistent with this article.

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

(c) To acquire real or personal property and to construct such projects as necessary to operate, maintain, enlarge, extend, preserve, and promote the utility systems in a manner that will ensure the economic, responsible, safe, and efficient provision of utility services, provided that title to all such property is vested in the City.

(d) To exercise the power of eminent domain pursuant to chapter 166, Florida Statutes, and to use utility funds to appropriate or acquire property,

excluding federal or state property, for the purpose of obtaining, constructing, and maintaining utility facilities, provided that title to all such property is vested in the City.

(e) To authorize the issuance of revenue bonds and other evidences of indebtedness of the City, secured by the revenues and other pledged funds and accounts of the utility system, pursuant to Florida law. Upon resolution of the Authority establishing the authorized form, terms, and purpose of such bonds, for the purpose of financing or refinancing utility system projects, and to exercise all powers in connection with the authorization of the issuance, and sale of such bonds by the City as conferred upon municipalities by part II of chapter 166, Florida Statutes, other applicable state laws, and section 103 of the Internal Revenue Code of 1986. Such bonds may be validated in accordance with chapter 75, Florida Statutes. The Authority may not authorize the issuance of general obligation bonds. Such bonds and other forms of indebtedness of the City shall be executed and attested by the officers, employees, or agents of the City, including the chief executive officer/general manager (CEO/GM) or chief financial officer of the utility system, the Authority has so designated as agents of the City. The Authority may enter into hedging agreements or options for the purpose of moderating interest rates on existing and proposed indebtedness or price fluctuations of fuel or other commodities, including agreements for the future delivery thereof, or any combinations thereof.

(f) To dispose of utility system assets only to the extent and under the conditions that the City Commission may dispose of such assets pursuant to section 5.04 of Article V.

(g) To prepare and submit to the City Commission, at least 3 months before the start of the City's fiscal year, an annual budget for all Authority and GRU operations, including the amount of any transfer to the City. The term of the budget shall coincide with the City's fiscal year. The amount of any transfer is subject to the limitations specified in section 7.11.

(h) To appoint and remove a CEO/GM as provided in this article.

(i) To recommend, by resolution to the City Commission, the acquisition and operation of a utility system not owned or operated by GRU as of the date of transfer of governing authority to the Authority.

7.04 Authority members.—

(1) There shall be five members of the Authority appointed by the Governor. Each member shall be a person of recognized ability and good business judgment as identified by the Governor who is expected to perform his or her official duties in the best interests of GRU and its customers. Appointments shall be made as follows:

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

(b) One member shall be a private, nongovernment customer consuming at least 10,000 kilowatt hours per month of electric usage during each of the previous 12 months. This member may be the owner or representative of the customer.

(c) Three members shall be 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.

(2) All members of the Authority shall:

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

(b) Receive GRU electric utility system service at all times during the term of appointment.

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

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

(3) The composition of the Authority shall be adjusted upon expiration of any member's term, or upon any Authority vacancy, to reflect the ratio of total electric meters serving GRU electric customers outside the City's jurisdictional boundaries to total electric meters serving all GRU electric customers. For example, upon expiration of a member's term or upon an Authority vacancy, if the ratio of total electric meters serving customers outside the City boundaries to total electric meters serving all electric customers reaches 40 percent, the Governor must appoint a second member from outside the City boundaries to serve the next term that would otherwise be served by a qualified elector of the City. Conversely, upon expiration of any member's term or upon any Authority vacancy, if the ratio subsequently falls below 40 percent, the Governor must appoint a qualified elector of the City to serve the next term that otherwise would have been served by a resident from outside the City boundaries.

7.05 Member nominations and terms.—

(1) The Governor shall issue a public notice soliciting citizen nominations for Authority members within 120 days after the effective date of this article. The nomination solicitation period shall remain open for at least 30 days after the date of the public notice.

(2) The Governor shall appoint initial members to the Authority from among the nominees within 60 days after the close of the nomination solicitation period. The initial terms of office for the five members shall commence at 12 a.m. on October 1, 2023. The terms of the initial appointments shall be as follows: one member shall be designated to

serve until 12 a.m. on October 1, 2024; one member shall be designated to serve until 12 a.m. on October 1, 2025; one member shall be designated to serve until 12 a.m. on October 1, 2026; and two members shall be designated to serve until 12 a.m. on October 1, 2027.

(3) The Governor shall have a citizen nomination solicitation period for at least 30 days and appoint members for subsequent terms from among the nominees. Members appointed for subsequent terms shall be appointed for 4-year terms commencing at 12 a.m. on October 1 of the year in which they are appointed. If a member is appointed to complete an unexpired term, the member’s term shall commence at the time of appointment and shall continue through the remainder of the unexpired term.

(4) The Governor shall fill any vacancy for the unexpired portion of a term within 60 days after the vacancy occurs if the remainder of the term exceeds 90 days.

7.06 Member compensation.—Beginning October 1, 2023, necessary expenses of members incurred in carrying out and conducting the business of the Authority shall be paid in accordance with Authority policy and procedures, subject to the approval of a majority of the members of the Authority. No supplemental benefits shall be provided for a member position.

7.07 Authority; oath; organization; and meeting.—

(1) The Authority shall initially meet at the chambers of the City Commission at 6 p.m. on Wednesday, October 4, 2023.

(2) Before taking office for any term, each member shall be given an oath or affirmation by the Mayor or his or her designee similar to the oath or affirmation required of a member of the City Commission.

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

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

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

7.08 Removal and suspension of members.—

(1) A member may be removed or suspended from office by the Governor in accordance with s. 112.501, Florida Statutes. In addition to the grounds

for removal set forth therein, a member may be removed by the Governor for failure to maintain the qualifications specified in section 7.04.

(2) The Authority may recommend to the Governor that a member be removed or suspended from office if it finds, by vote of at least three members, a reasonable basis for removal or suspension on one or more of the grounds set forth in s. 112.501, Florida Statutes, or for failure to maintain the qualifications specified in section 7.04. The Authority shall give reasonable notice of any proceeding in which such action is proposed and must provide the member against whom such action is proposed a written statement of the basis for the proposed action and an opportunity to be heard. The member against whom such action is proposed may not participate in the Authority's debate or vote on the matter.

7.09 Management and personnel.—

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

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

(3) The Authority shall fix the salary of the CEO/GM, and the CEO/GM shall fix the salaries of all other employees who serve under his or her direction consistent with the annual budget approved by the Authority. 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.

7.10 General provisions.—

(1) The City and the Authority shall perform all acts necessary and proper to effectuate an orderly transition of the governance, operation, management, and control of all utility systems, properties, and assets held in the possession of GRU as of January 1, 2023, to the Authority, including, but not limited to, the creation of such instruments as are necessary for the Authority to function in accordance with this article. Notwithstanding the reorganization of the governance structure of the management of the utility system as provided in this section, the utility system shall continue to be

operated as a single enterprise and there shall be no change to the ownership of the utility system.

(2) All City ordinances, policies, rates, fees, assessments, charges, rules, regulations, and budgets related to operation of the utilities shall remain in effect until such time as the Authority, pursuant to the powers granted in this article, modifies any such item. In the event that any City charter provision, ordinance, resolution, decree, or any part thereof conflicts with the provisions of this article, the provisions of this article shall govern. This subsection is not intended to and shall not interfere with existing contractual arrangements between the City and county, regardless of whether such arrangements are reflected in charter provisions, ordinances, resolutions, decrees, or any part thereof.

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

(4) No franchise, right-of-way, license, permit or usage fee or tax may be levied by the City upon the Authority or the utilities unless allowed by general law.

(5) Any utility advisory board created by the City Commission shall have no role with respect to the Authority.

(6) No member of the Authority shall be individually responsible for Authority debts or liabilities.

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

(8) In order to provide for the transitional administrative needs and orderly compliance with the provisions of this act, the chairperson of the Authority or his or her designee is authorized to execute documents required for the transition.

7.11 Limitation on government services contribution.—

(1) MAXIMUM CAP ON GSC.—For any fiscal year, the GSC may not exceed aggregate utility system net revenues less flow of funds.

(2) DEBT SERVICE AND AVOIDANCE.—Any remaining funds, after deductions for flow of funds and GSC, shall be dedicated to additional debt service or utilized as equity in future capital projects.

7.12 Limitation on utility directives.—The Authority and the CEO/GM, in making all policy and operational decisions over the affairs of the utility system as contemplated under the provisions of this act, shall consider only pecuniary factors and utility industry best practices standards, which do not include consideration of the furtherance of social, political, or ideological

interests. Appropriate pecuniary factors and utility industry best practices are those which solely further the fiscal and financial benefit of the utility system and customers. This provision does not prohibit the establishment and application of rate structures based on utility usage.

Section 3. This act shall take effect July 1, 2023.

Approved by the Governor June 28, 2023.

Filed in Office Secretary of State June 28, 2023.