
(Ch. 2023-348, § 2, 6-28-23, eff. 7-1-23)

7.01. Establishment.

There is created a regional utilities authority to be known as the "Gainesville Regional Utilities Authority" ("authority"). "Gainesville Regional Utilities" (GRU) shall be governed by the authority upon installation of the authority's ~~members~~ directors pursuant to this article. The Authority shall be a separate legal entity while operate operating GRU 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 and other City Charter Officers. 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. The language in this article supersedes preexisting and subsequent City Commission and City actions that are not expressly authorized by the GRU Authority.

NOTES – *The amendments above, changes the titles of those who serve on the Authority from "members" to "directors" – the rationale is that previously, the title of "members" were used for those who served on a Utility Advisory Board which served under the City Commission. This change it to remove any confusion that one might have and incorrectly believing that the Authority serves at the direction of the Commission; accordingly, it is strongly recommended that they are referred to as "directors"*

"Other City Charter Officers" is added to those entities and individuals for whom it is made clear do not have control over the Authority.

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. The GSC shall include the sum total of any net-negative cost incurred by GRU resulting from any Service-level agreements with the city.
- ~~(8)~~ "GRU" means Gainesville Regional Utilities.
- ~~(9)~~ "Member Director" means a member of the authority.
- ~~(10) "Net revenues" means the gross revenues less fuel revenues.~~

(119) "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.

(120) "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.

NOTES – *"Flow of Funds" and "Net Revenues" are removed as they become obsolete in the face of the proposed changes in 7.11 below. SLA calculations are added to the General Services contributions in order to codify that the funds transferred to the City from GRU do not only include the one-time annually budgeted GSC, but must also consider those agreements in which the City benefits financially from an agreement between the City and GRU, such as with IT or other joint SLAs.*

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 as recorded in GRU's records.
 - (d) To exercise the power of eminent domain pursuant to F.S. Ch. 166, 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 F.S. Pt. II, Ch. 166, other applicable state laws, and Section 103 of the Internal Revenue Code of 1986. Such bonds may be validated by the Authority, as agent of the City, in accordance with F.S. Ch. 75. 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. The powers conferred by this section are in addition and supplemental to, and are not in substitution for, and the limitations imposed by this section shall not affect, the powers conferred by any other section of this article or by law.
 - (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.

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- (g) To prepare and ~~submit~~ present 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.~~
 - (i) To sue or be sued in its own name. All damage claims arising from the operations of the Authority and the utilities shall be the responsibility of and be liquidated by the Authority from the appropriate funds of the Utilities.
 - (j) To contract, including, without limitation, pursuant to interlocal agreements authorized under Section 163.01, Florida Statutes, with the City, any Public Agency, as defined in Section 163.01, or any individual, both inside and outside the city limits, including, without limitation, for a joint financing.

NOTES - *The proposed changes in this section reinforce the autonomy of the Authority as a Municipal Agency. It provides that GRU can keep its own property records, without dependence on the City; that the Authority can engage in the issuance of its own bonding, free from the City, giving some assurances to bond rating agencies and investors. It establishes the point that the duties and responsibilities should not be construed as a limit to the scope of those others which were previously given to the Authority in all other sections.*

It also changes the word "submit" to present in order to remove any inference that the City has some approval authority; it messages that because the Authority is autonomous, that it stands alone in all legal proceedings, unencumbered by the City.

It changes the title. "General Manager/GM" to "Chief Executive Officer/CEO" throughout the bill in order to acknowledge the new and expanded role and remove any confusion as the lead administrator was referred to as "Manager" under the City Commission's governance. Finally, it spells out that the Authority can autonomously enter into intergovernmental agreements.

7.04. Authority ~~members~~ directors.

- (1) There shall be five ~~members~~ directors of the authority appointed by the Governor. Each ~~member~~ director 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~~ director shall be a residential customer with substantial knowledge of GRU, its operations, and its history.
 - (b) One ~~member~~ director 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~~ director may be the owner or representative of the customer.
 - (c) Three ~~members~~ directors 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.

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- (2) All ~~members~~ directors 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~~ director 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~~ director'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~~ director'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~~ director 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~~ director'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.

NOTE – *Again, just changes the titles from “members” to “directors”.*

7.05. ~~Member~~ Director nominations and terms.

- (1) The Governor shall issue a public notice soliciting citizen nominations for authority ~~members~~ directors 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~~ directors 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~~ directors shall commence at 12 a.m. on October 1, 2023. The terms of the initial appointments shall be as follows: one ~~member~~ director shall be designated to serve until 12 a.m. on October 1, 2024; one ~~member~~ director shall be designated to serve until 12 a.m. on October 1, 2025; one ~~member~~ director shall be designated to serve until 12 a.m. on October 1, 2026; and two ~~members~~ directors 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~~ directors for subsequent terms from among the nominees. ~~Members-Directors~~ appointed for subsequent terms shall be appointed for 4-year terms commencing at 12:00 a.m. on October 1 of the year in which they are appointed. If a ~~member~~ director is appointed to complete an unexpired term, the ~~member~~ director'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~~ Director compensation.

Beginning October 1, 2023, necessary expenses of ~~members~~ directors incurred in carrying out and conducting the business of the authority shall be paid in accordance with authority policy and procedures, subject

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to the approval of a majority of the ~~members~~ directors of the authority. No supplemental benefits shall be provided for a ~~member~~ director position.

7.07. Authority; oath; organization; and meeting.

- (1) The authority shall initially meet at the chambers of the city commission at 6:00 p.m. on Wednesday, October 4, 2023.
- (2) Before taking office for any term, each ~~member~~ director 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~~ directors.

- (1) A ~~member~~ director may be removed or suspended from office by the Governor in accordance with F.S. § 112.501. In addition to the grounds for removal set forth therein, a ~~member~~ director 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~~ director be removed or suspended from office if it finds, by vote of at least three ~~members~~ directors, a reasonable basis for removal or suspension on one or more of the grounds set forth in F.S. § 112.501, 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~~ director against whom such action is proposed a written statement of the basis for the proposed action and an opportunity to be heard. The ~~member~~ director 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, as well as serve in matters of property acquisition as the agent action on behalf of the Authority, 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~~ director 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 manage and operate GRU. ~~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~~, All GRU employees shall continue without~~

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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.

- (4) The GRU may retain for itself a Utilities Attorney that must be admitted to the practice of law in Florida and shall be the legal advisor to and attorney for the GRU. The Utilities Attorney shall serve at the will of the CEO. The Utilities Attorney shall prosecute and defend all suits, complaints, and controversies for and on behalf of the GRU and GRUA, unless otherwise directed by the CEO, and shall review all contracts, bonds and other instruments in writing in which the GRU is to be a party, and shall endorse on each approval as to form and legality.
- (5) The CEO may employ a Utilities Clerk who shall keep records and perform such other duties as are prescribed by this act or the GRUA. The Utilities Clerk shall serve at the will of the CEO.

NOTE – Clarifies that the CEO can act as the agent of an autonomous Authority in matters of property acquisition. Also removes the list of specific authorities vested in utility's lead administrator and replaces it with the verbiage that states the CEO will manage and operate the utility in order to remove any ambiguity as to the CEO's authority. Section (3) removes redundant language and sections (4) and (5) clarify that the Authority can hire its own Legal Counsel and Clerk.

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 and recorded in GRU's official records 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.

NOTE – GRU's official property records are much more thorough, and this clarifies that GRU's records will be the ultimate arbiter of those assets held on the date in question and transferred.

- (2) All city resolutions, 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, resolution, ordinance, resolution, decree, or any part thereof conflicts with the provisions of this article, the provisions of this article shall govern; provided, however, the foregoing shall not apply to any conflict with any existing resolutions, ordinances or agreements related to outstanding indebtedness (including credit facilities and liquidity facilities), interest rate hedge agreements, credit or liquidity facilities or other agreements entered into in connection with indebtedness of the utility system entered into before the effective date of this article. 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.

NOTE – This section adds resolutions to the list of actions that cannot affect the management of the utility. However, for the Bond rating agencies and the investors, it must be spelled out that prior resolutions which issued debt instruments by the City Commission are not null and void.

- (3) The Authority may amend or supplement any existing agreements or resolutions entered into or adopted by the City, as applicable, that are related to the utility system and governed by this article, without any approval or further action of the City

NOTE – Reiterates the autonomy of the Authority.

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- (4) The transfer of governance to the Authority will not in any way impair the rights or remedies of holders or secured parties under any of the bond resolutions relating to the utility system or other agreements executed in connection therewith.

NOTE – *Language for the Bond rating agencies and investors to ensure that any prior agreements have not been impaired.*

- (5) All delegations of authority to the ~~General Manager~~ CEO or chief financial officer of the utility, including without limitation, modifications of certain credit and liquidity facilities adopted in resolutions of the City Commission before the effective date of this article relating to indebtedness of the utility system and in any credit or liquidity facilities and interest rate hedge agreements and other obligations of the utility system, shall remain in effect but shall instead be deemed to be delegations to the CEO (previously known as the general manager) and chief financial officer of the utility system, respectively, without any further actions of the Authority or the City.

NOTE – *Language for the Bond rating agencies and investors to ensure that any prior agreements have not been impaired.*

- (~~36~~) 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. Contracts and obligations relating to the Utilities incurred prior to the taking effect of this article shall be binding upon the Authority insofar as they apply to the Authority and the Utilities.

NOTE – *Language for the Bond rating agencies and investors to ensure that any prior agreements have not been impaired.*

- (47) 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~~ absent the formal consent of the majority of the Authority's directors.

NOTE – *Prior language prohibiting any action taken by the City Commission to effectuate the governance or control of GRU is already contained in the existing act of the Legislature. So as to clarify that legislative intent, and to avoid an instance where the city makes such an attempt, and thus, litigation would become necessary, this prohibition would spell out the prohibition to any court of law.*

- (~~58~~) Any utility advisory board created by the city commission shall have no role with respect to the authority.

- (~~69~~) No ~~member~~ director of the authority shall be individually responsible for authority debts or liabilities.

- (~~710~~) The authority shall develop an ethics policy and a code of business conduct that shall be reviewed at least biennially.

- (~~811~~) 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 GRU's profits after accounting for all necessary payments for operating the Utility's systems ~~aggregate utility system net revenues less flow of funds.~~

NOTE – *Changes verbiage to align with Generally Accepted Accounting Principles.*

- (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.

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NOTE – *Changes verbiage to align with Generally Accepted Accounting Principles.*

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 2. The City Commission, as defined in Section 1 of this act, shall have no power or authority over the Gainesville Regional Utility or the Gainesville Regional Utility Authority, and all ordinances of the City of Gainesville that conflict with this act are hereby and henceforth repealed and inoperative.

Section 3. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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