

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** CS/CS/HB 1325 Gainesville Regional Utilities Commission, Alachua County  
**SPONSOR(S):** Energy & Utilities Subcommittee; Local Government Affairs Subcommittee; and Perry  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

| REFERENCE                                | ACTION           | ANALYST  | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|----------|---------------------------------------|
| 1) Local Government Affairs Subcommittee | 12 Y, 0 N, As CS | Zaborske | Miller                                |
| 2) Energy & Utilities Subcommittee       | 8 Y, 3 N, As CS  | Keating  | Keating                               |
| 3) Local & Federal Affairs Committee     |                  |          |                                       |

### SUMMARY ANALYSIS

CS/HB 1325 is a local bill amending the charter for the City of Gainesville to establish the Gainesville Regional Utilities Commission (GRUC). 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 GRUC, a board to be appointed by the City Commission. The bill details GRUC'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 City's current charter relating to the general manager for utilities.
- Establishes GRUC as a regional independent utilities commission.
- Provides that GRUC will be a municipally-owned, cost-based, not-for-profit, and political subdivision of the state with no ad valorem taxing authority.
- Provides that GRUC will consist of 5 members appointed by the City Commission
- Allows for up to 3 nonvoting members to be appointed by GRUC.
- Sets forth qualification requirements for GRUC members.
- Provides that the monthly salary for voting members of GRUC will be 60% the salary of a City Commissioner, adjusted by the consumer price index.
- Staggers the term time period for initial GRUC members and provides for 4-year terms thereafter.
- Provides for removal of GRUC for cause, and sets forth grounds for removal from office.
- Gives GRUC the power of eminent domain.
- Gives GRUC exclusive power and authority to bill and collect fees or charges for all utilities.
- Indemnifies GRUC members and executives.
- Provides that the amount transferred by GRUC to the City's General Revenue Fund cannot be more than 9% or less than 7% of gross revenues, after first paying other expenses.
- Provides that a Chief Executive Officer/General Manager (CEO/GM) will direct and administer utilities functions under GRUC's policies and authority.

The Economic Impact Statement (EIS) projects \$160,000 in costs to pay 5 new commissioners, plus their travel and expenses. It does not identify any other costs associated with the creation of, transfer of powers and responsibilities to, or staffing and operation of the new commission.

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 conjunction with the next Presidential Preference Primary election in Alachua County.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Alachua County - City of Gainesville

Alachua County has an estimated population of approximately 253,000 residents.<sup>1</sup> The largest city in the County, the City of Gainesville,<sup>2</sup> has an estimated population of approximately 127,000 residents.<sup>3</sup> The City of Gainesville has a seven-member City Commission, comprised of four commissioners elected from single member districts, two elected at-large, and one member who is elected as mayor.<sup>4</sup>

##### Municipal Utilities

Pursuant to Art. VIII, s. 2(b), of the State Constitution, municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. The legislative body of each municipality has the power to enact legislation on any subject upon which the state Legislature may act, with certain exceptions.<sup>5</sup>

Under their home rule power and as otherwise provided or limited by law or agreement, municipalities may provide utilities to citizens and entities within the municipality's corporate boundaries, in unincorporated areas, and even other municipalities. Current law provides that municipalities or an agency of a municipality may be a "joint owner of, giving, or lending or using its taxing power or credit for the joint ownership, construction, and operation of electrical energy generating or transmission facilities with any corporation, association, partnership or person."<sup>6</sup> Additionally, municipalities are expressly authorized by general law to provide water and sewer utility services.<sup>7</sup> With respect to public works projects, including water and sewer utility services,<sup>8</sup> municipalities may extend and execute their corporate powers outside of their corporate limits as "desirable or necessary for the promotion of the public health, safety and welfare" to accomplish the purposes of ch. 180, F.S.<sup>9</sup> Current law requires municipalities providing telecommunication services to abide by certain requirements.<sup>10</sup> Municipal

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<sup>1</sup> 2013 Alachua County estimated population from the United States Census Bureau, State & County QuickFacts, available at <http://quickfacts.census.gov/qfd/states/12/12001.html> (last visited 03/22/2015).

<sup>2</sup> *Id.*

<sup>3</sup> 2013 City of Gainesville estimated population from the United States Census Bureau, State & County QuickFacts, available at <http://quickfacts.census.gov/qfd/states/12/1225175.html> (last visited 03/22/2015).

<sup>4</sup> Gainesville's City of Commission, available at <http://www.cityofgainesville.org/CityCommission.aspx> (last visited 03/22/2015).

<sup>5</sup> Pursuant to s. 166.021(3)(a)-(d), F.S., a municipality may not enact legislation on the following: the subjects of annexation, merger, and exercise of extraterritorial power, which require general law or special law; any subject expressly prohibited by the constitution; any subject expressly preempted to state or county government by the constitution or by general law; and any subject preempted to a county pursuant to a county charter adopted under the authority of the State constitution.

<sup>6</sup> Art. VII, s. 10(d), Fla. Const. See ss. 361.10-361.18, F.S.

<sup>7</sup> Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes).

<sup>8</sup> S. 180.06, F.S., authorizes other public works projects, including alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes.

<sup>9</sup> S. 180.02(2), F.S. However, a municipality may permit any other municipality and the owners of lands outside its corporate limits or within the limits of another municipality to connect with its water and sewer utility facilities and use its services upon agreed terms and conditions. S. 180.19, F.S.

<sup>10</sup> See s. 166.047, F.S. (setting forth certain requirements for municipal telecommunication services); s. 350.81, F.S. (providing conditions under which local governments may provide telecommunications services).

utilities are subject to limited oversight by the Public Service Commission (PSC).<sup>11</sup> PSC regulation of municipal electric utilities is limited to oversight of safety, reliability, territorial, and rate structure issues.<sup>12</sup> PSC regulation of municipal natural gas utilities is limited to territorial issues.<sup>13</sup> Municipal utilities that provide water and/or wastewater service are exempt from PSC regulation.<sup>14</sup>

### Gainesville Regional Utilities (GRU)

Gainesville Regional Utilities (GRU) was established in 1912 as a city-run electric utility.<sup>15</sup> It is the fifth largest municipal electric utility in Florida, serving approximately 93,000 retail and wholesale customers in Gainesville and surrounding areas.<sup>16</sup> It now 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 a \$77.2 million and \$95.2 million budget in 2014 and 2013, respectively.<sup>17</sup> 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.<sup>18</sup> According to the audit, GRU's net financial position decreased by \$1.7 million and \$14.1 million in 2014 and 2013, respectively, but increased by \$16.8 million in 2012.<sup>19</sup> There are 34 municipal electric utilities in Florida.<sup>20</sup> GRU's residential electric utility rates in January 2015 were above the average for Florida municipal utilities, and the second highest municipal rates among Florida municipal utilities.<sup>21</sup>

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.<sup>22</sup> The Charter also sets forth the GM's general powers and duties, which provide that the GM is:<sup>23</sup>

- 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

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<sup>11</sup> See s. 366.011(1), F.S. (exemption for municipal utilities); s. 367.022(2), F.S. (exempting governmental entities that provide water and/or wastewater service from PSC regulation).

<sup>12</sup> Ss. 366.04(2), (5), and (6), F.S. According to the PSC's most recent "Facts and Figures of the Florida Utility Industry" (March 2014), there are 35 municipal electric utilities in Florida that are subject to this limited jurisdiction. Available at <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf> (last visited 03/22/2015).

<sup>13</sup> S. 366.04(3), F.S. According to the PSC's most recent "Facts and Figures of the Florida Utility Industry" (March 2014), there are 27 municipal electric utilities and 4 special gas districts in Florida that are subject to this limited jurisdiction. Available at <http://www.psc.state.fl.us/publications/pdf/general/factsandfigures2014.pdf> (last visited 03/22/2015).

<sup>14</sup> S. 367.022(2), F.S.

<sup>15</sup> Gainesville Area Chamber of Commerce, *A Gainesville Solution: Energy Competitiveness Report* (November 2013), at p. 41, available at <http://www.gainesvillechamber.com/wp-content/uploads/2013/11/Chamber-Energy-Competitiveness-Report-Nov-2013.pdf> (last visited 03/13/2015).

<sup>16</sup> About GRU, available at <https://www.gru.com/AboutGRU.aspx> (last visited 03/22/2015).

<sup>17</sup> 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 03/22/2015).

<sup>18</sup> 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 03/22/2015), at p. 8.

<sup>19</sup> *Id.* at p. 5.

<sup>20</sup> Florida Municipal Electric Association, Florida Municipal Utility Map, available at <http://publicpower.com/florida-municipal-utility-map/> (last visited 03/22/2015).

<sup>21</sup> Florida Municipal Electric Association, Florida Electric Bill Comparisons, available at <http://publicpower.com/electric-rate-comparisons/> (last visited 03/22/2015).

<sup>22</sup> City of Gainesville Code of Ordinances, available at [https://www.municode.com/library/fl/gainesville/codes/code\\_of\\_ordinances?nodeld=PTICHLA\\_ARTIICICO](https://www.municode.com/library/fl/gainesville/codes/code_of_ordinances?nodeld=PTICHLA_ARTIICICO) (last visited 03/22/2015), at part I, art. V, s.3.06(1).

<sup>23</sup> *Id.* at part I, art. III, s. 3.06(2)(a)-(h).

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
- Required to perform all other duties prescribed by law, this charter, ordinance, or direction of the City Commission.

The Charter also prohibits the City from disposing of, or agreeing to dispose of, in whole or part, the City's electrical or water production or distribution facilities so as to materially reduce the City's capacity to produce or distribute electrical energy or water, except by ordinance with the prior approval of a majority vote of the qualified electors of the city.<sup>24</sup>

The Code of Ordinances for the City of Gainesville provides for an Energy Advisory Committee comprised of 9 members appointed by the City Commission.<sup>25</sup> The committee has the following duties, functions, powers, and responsibilities:

- Serve as a communications channel between the City Commission, utility staff, and the citizens of the city, in order to understand and solve the many complex problems relating to energy;
- Promote public access to information on the city facilities, services, policies, and programs concerning energy, and consider the future energy needs of the community with respect to the utilities as well as general government;
- Assist utility staff by suggesting and reviewing policies affecting programs and services that affect acquisition, delivery, or utilization of energy resources within the community; and
- Perform any other duties which may be within the purview of the committee which may be assigned by the City Commission.

There also is a Regional Utilities Committee, on which three City Commissioners currently sit.<sup>26</sup>

Chapter 27 of the Code of Ordinances for the City of Gainesville sets forth regulations pertaining to each municipal utility system.<sup>27</sup>

In November 2013, the Gainesville Area Chamber of Commerce and Council for Economic Outreach submitted a report to the City of Gainesville.<sup>28</sup> The study, conducted by a 12-member Energy Study

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<sup>24</sup> *Id.* at part I, art. V, s. 5.04.

<sup>25</sup> *Id.* at part II, ch. 2, art. V, div. 7.

<sup>26</sup> According to the City of Gainesville's website, Commissioners Todd Chase, Lauren Poe, and Craig Carter are current members of the Regional Utilities Commission, available at <http://www.cityofgainesville.org/CityCommission/CommissionerToddChase.aspx>, <http://www.cityofgainesville.org/CityCommission/CommissionerLaurenPoe.aspx>, and <http://www.cityofgainesville.org/CityCommission/CommissionerCraigCarter.aspx> (last visited 03/22/2015).

<sup>27</sup> *Id.* at part II, ch. 27, art. I-VI.

Group, led by Representative N. David Flagg, who is a former Mayor of Gainesville, and Dr. David A. Denslow, Jr., a retired University of Florida economist.<sup>29</sup> According to the report, Gainesville is a unique city with about 58% of property off the tax rolls.<sup>30</sup> The City Commission has directly governed GRU for over 100 years.<sup>31</sup> According to the report, GRU's combined municipal utility system operation is composed of five Enterprise Funds (Electric System, Water System, Wastewater System, Gas System, and Telecommunications/GRUCom).<sup>32</sup>

The report provides four policy recommendations for the City of Gainesville "to help Gainesville remain a competitively advantaged community for sustainable economic development as it relates to overall energy costs."<sup>33</sup> The fourth recommendation provides that the method of governance be changed to an appointed utility authority.<sup>34</sup> The report notes that JEA (formerly known as Jacksonville Electric Authority), is the largest municipal utility in Florida.<sup>35</sup> It has a governance structure under which the board is appointed by the Mayor of Jacksonville, subject to confirmation by the Council.<sup>36</sup> The report also notes that the Orlando Utilities Commission board appoints its own members from a pool of candidates identified by a city nominating committee,<sup>37</sup> and that Lakeland Electric has a Commission/Customer Committee Hybrid.<sup>38</sup> The report states that the City of Tallahassee has a City Commission governance model.<sup>39</sup> 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 class electricity costs in those cities are significantly lower than in Gainesville."<sup>40</sup>

## Effect of Proposed Changes

### Section 1

The bill repeals a current charter provision, Section 3.06 of Article III in Section 1 of Chapter 90-394, Laws of Florida, relating to the general manager for utilities. The bill renders that provision obsolete.

### Section 2

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<sup>28</sup> Gainesville Area Chamber of Commerce, *A Gainesville Solution: Energy Competitiveness Report* (November 2013), available at <http://www.gainesvillechamber.com/wp-content/uploads/2013/11/Chamber-Energy-Competitiveness-Report-Nov-2013.pdf> (last visited 03/22/2015).

<sup>29</sup> *Id.* at p. 7.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> The Florida Enterprise Zone Program, created by the Legislature in 1982, provides incentives, including state and local government investments and tax incentives, and local regulatory relief, to encourage businesses to invest and locate in designated zones (economically distressed areas) and residents to improve their property. The Florida Legislature's Office of Program Policy Analysis & Gov't Accountability, Research Memorandum: *Florida's Enterprise Zone Program* (January 5, 2015), available at

[http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.fl-counties.com%2Fdocs%2Fdefault-source%2F2015-Advocacy%2Foppaga-2015-analysis-of-florida%2527s-enterprise-zones.pdf%3Fsfvrsn%3D0&ei=ca4FVcuqJ8jFggTLtoT4Cg&usq=AFQjCNFAzilMlewOz7CPbQfRKyt7aa5\\_3A&bvm=bv.88198703,d.eXY](http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.fl-counties.com%2Fdocs%2Fdefault-source%2F2015-Advocacy%2Foppaga-2015-analysis-of-florida%2527s-enterprise-zones.pdf%3Fsfvrsn%3D0&ei=ca4FVcuqJ8jFggTLtoT4Cg&usq=AFQjCNFAzilMlewOz7CPbQfRKyt7aa5_3A&bvm=bv.88198703,d.eXY) (last visited 03/15/2015), citing ss. 290.001-290.016, F.S. (authorizing the creation of enterprise zones and specifying the program's criteria and goals).

<sup>33</sup> *Id.* at 7.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 51.

<sup>36</sup> *Id.* at 50.

<sup>37</sup> *Id.* at 50.

<sup>38</sup> *Id.* at 50.

<sup>39</sup> *Id.* at 50.

<sup>40</sup> *Id.*

The bill amends the charter for the City of Gainesville, adding Article VII to the charter,<sup>41</sup> establishing the “Gainesville Regional Utilities Commission.” The following chart summarizes the provisions proposed in the bill to be added to the City of Gainesville’s charter:

| ARTICLE VII GAINESVILLE REGIONAL UTILITIES COMMISSION |  |
|---|--|
| 7.01 Establishment                                    |  |
| 7.01(1)   | <ul style="list-style-type: none"> <li>• Creates a regional independent utilities commission</li> <li>• Names it “Gainesville Regional Utilities Commission” (GRUC)</li> <li>• GRUC consists of 5 voting members</li> <li>• Defines “utilities commission,” “member,” and “utilities”</li> </ul>   |
| 7.01(2)   | <ul style="list-style-type: none"> <li>• Not-for profit enterprise</li> <li>• Municipal legal entity</li> <li>• Plenary authority</li> <li>• Governed by an independent governing commission</li> <li>• Consists of 5 appointed members</li> <li>• GRUC members appointed by the City Commission</li> <li>• Part of the government of the City of Gainesville</li> <li>• GRUC owned by the citizens of the City of Gainesville</li> </ul>  |
| 7.01(3)   | <ul style="list-style-type: none"> <li>• Plenary authority for the express purpose of acquiring, constructing, operating, providing, financing, and having complete authority with respect to utilities</li> </ul>   |
| 7.02 GRUC Voting members                              |  |
| 7.02(1)   | <ul style="list-style-type: none"> <li>• 5 voting members, appointed by simple majority vote of the City Commission, that meet the following qualifications: <ul style="list-style-type: none"> <li>○ Reside year-round within GRUC’s electric service territory</li> <li>○ GRUC customer</li> <li>○ Possess, at a minimum, a 4-year baccalaureate degree from an accredited institution with a major area of study in public affairs, business, law, economics, accounting, engineering, finance, energy, or another field substantially related to GRUC’s duties and functions or, alternatively, be a business owner or partner or officer in a business with over \$5 million in annual sales</li> <li>○ Not been convicted of a felony</li> </ul> </li> <li>• Voting members appointed to staggered 4-year terms</li> <li>• Voting members must maintain qualifications</li> <li>• Power to make and adopt rules and regulations</li> <li>• Must be qualified electors of the City of Gainesville, except 1 must be a qualified elector from the unincorporated area of Alachua County, and the composition of the commission must be adjusted to reflect the ratio of electric meters serving customers in the unincorporated area to electric meters serving all customers</li> </ul> |
| 7.02(2)   | <ul style="list-style-type: none"> <li>• Voting members must remain qualified throughout term</li> <li>• Prohibits until January 1, 2020, any current or previous city or county employee or any elected or appointed city or county officer or official, who was an employee or elected or appointed officer or official after January 1, 2000, from being a voting member</li> <li>• Prohibits a voting member who is appointed for 2 full consecutive 4-year terms from succeeding self</li> </ul>  |
| 7.03 Voting member terms                              |  |
| 7.03(1)   | <ul style="list-style-type: none"> <li>• Within 90 days after approval of the act by referendum initial members appointed</li> <li>• Initial member term starts on October 4, 2016</li> <li>• Initial terms (1, 2, 3, 4, and 5 years)</li> <li>• 4-year terms after initial appointments</li> </ul>  |
| 7.03(2)   | <ul style="list-style-type: none"> <li>• Expeditiously schedule appointment session and fill any voting member vacancy within 2 months after permanent vacancy if more than 3 months left in term</li> </ul>   |
| 7.03(3)   | <ul style="list-style-type: none"> <li>• Voting member may be removed from office as provided by law upon conviction of malfeasance or misfeasance, upon conviction of a felony, for failure to maintain all qualifications, or for violation of this act or a “provision of stipulated governance</li> </ul>  |

<sup>41</sup> Ch. 12760, Laws of Fla., 1927, as amended. See ch. 90-394, s. 1, Laws of Florida (charter).

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|   | policies as may be subsequently adopted and enforced” by GRUC   |
| <b>7.04 Utilities commission; initial meeting, organization, and oath</b> |   |
| 7.04(1)   | <ul style="list-style-type: none"> <li>• Initial meeting day, time, and location</li> <li>• Meet at least once each month</li> <li>• Meet at office of GRUC or as otherwise determined</li> <li>• Meetings open to the public</li> <li>• Minutes kept at each meeting</li> <li>• Initial meeting and the first meeting after each annual appointment includes an organizational agenda item for: <ul style="list-style-type: none"> <li>◦ Mayor to swear in new members</li> <li>◦ Election by voting members of chairperson, vice chairperson, and secretary/treasurer</li> </ul> </li> </ul>  |
| 7.04(2)   | <ul style="list-style-type: none"> <li>• Sets forth the oath</li> </ul>   |
| <b>7.05 Member compensation</b>   |   |
|   | <ul style="list-style-type: none"> <li>• Salary of 60% each month of the salary of a city commissioner, with adjustments</li> <li>• Expenses for carrying on and conducting business</li> <li>• No supplemental benefits</li> </ul>   |
| <b>7.06 Appointment of chief executive officer/general manager</b>        |   |
| 7.06(1)   | <ul style="list-style-type: none"> <li>• Full and exclusive authority over the management, operation, and control over the city’s utilities</li> <li>• Employ and discharge all employees only through the chief executive officer/general manager (CEO/GM)</li> </ul>  |
| 7.06(2)   | <ul style="list-style-type: none"> <li>• Member cannot be the first CEO/GM</li> </ul>   |
| <b>7.07 General provisions</b>  |   |
| 7.07(1)   | <ul style="list-style-type: none"> <li>• All business of GRUC overseen by members</li> </ul>  |
| 7.07(2)   | <ul style="list-style-type: none"> <li>• GRUC operates as a municipally-owned, cost-based, not-for-profit, and political subdivision of the state</li> <li>• GRUC has no ad valorem taxing power</li> </ul>   |
| 7.07(3)   | <ul style="list-style-type: none"> <li>• GRUC is comprised of voting and nonvoting members</li> <li>• Provides the CEO/GM shall be a nonvoting member of GRUC</li> <li>• Other nonvoting members may be staff executives and external individuals who reside in the electric service area; they may be removed by GRUC</li> <li>• Provides there can be no more than 3 nonvoting members</li> <li>• Nonvoting members can only be appointed for no more than 2 years, but may be reappointed for no more than 2 additional years</li> <li>• Nonvoting members receive no compensation, but can receive expenses</li> </ul>  |
| 7.07(4)(a)-(e)  | <ul style="list-style-type: none"> <li>• GRUC, upon unanimous resolution after notice and an opportunity to respond, may request that the Governor: <ul style="list-style-type: none"> <li>◦ Suspend or remove a voting member for malfeasance, misfeasance, neglect of duty, habitual drunkenness, incompetence, permanent inability to perform official duties, or failure to maintain qualifications. Felony conviction</li> <li>◦ Suspend a voting member who is arrested for a felony or misdemeanor related to official duties or who is indicted or informed against for a state or federal felony or misdemeanor</li> <li>◦ Remove a voting member who is convicted of a state or federal felony or misdemeanor</li> </ul> </li> <li>• City Commission may make an appointment to fill a temporary vacancy due to suspension</li> <li>• If cleared of charges, the suspended voting member is reinstated</li> <li>• Member subject to suspension, discipline, or reinstatement may not participate in deliberations, debate, or vote</li> </ul> |
| 7.07(5)   | <ul style="list-style-type: none"> <li>• Private tangible and intangible property of member is not subject to the payments of GRUC debts</li> </ul>   |
| 7.07(6)(a)-(e)  | <ul style="list-style-type: none"> <li>• Provides the right of indemnification for officers, executive, or members of GRUC if involved in utilities-related legal action, and sets forth specifics regarding these rights</li> </ul>  |
| 7.07(7)   | <ul style="list-style-type: none"> <li>• The City Commission and the City must create conveyance instruments to effect</li> </ul>   |

|                               |   |
|-------------------------------|---|
|                               | <p>the unrestricted transfer of governing authority over land, facilities, licenses, debt, funds, entitlement, or other utility activity</p> <ul style="list-style-type: none"> <li>• The City Commission and the City may not encumber such conveyance with conditions precedent or administrative requirements</li> </ul>   |
| 7.07(8)                       | <ul style="list-style-type: none"> <li>• A special meeting with the City Commission will be held when the chairperson calls for one or if the City Commission demands such a meeting in writing and delivers the demand to GRUC's secretary/treasurer</li> </ul>  |
| 7.07(9)                       | <ul style="list-style-type: none"> <li>• CEO/GM will provide an orientation and training program for new members</li> <li>• Staff management also will periodically provide materials or briefing sessions for members</li> <li>• Encourages member to attend sessions or program and review materials relating to their responsibilities of members of publicly owned utilities</li> </ul>   |
| <b>7.08 Powers and duties</b> |   |
| 7.08(1)                       | <ul style="list-style-type: none"> <li>• For transition purposes, all previously applicable utilities-related ordinances, policies, rates, fees, rules, regulation, budgets, and other provisions under the City of Gainesville charter are considered adopted, reenacted, or assumed by GRUC</li> </ul>  |
| 7.08(2)                       | <ul style="list-style-type: none"> <li>• GRUC may exercise the power of eminent domain for specified purposes</li> </ul>  |
| 7.08(3)                       | <ul style="list-style-type: none"> <li>• GRUC has exclusive power and authority to bill and collects fees and charges for utilities and services</li> <li>• Sets forth how funds are collected and paid out: first, operating and maintenance expenses paid; second, reserves are funded; third, a payment is made to the general fund of the city not to exceed 9% or be less than 7% of gross revenues for GRUC; and, if there is a surplus it may be paid into the general fund<sup>42</sup></li> </ul>  |
| 7.08(4)                       | <ul style="list-style-type: none"> <li>• GRUC must submit a monthly statement to the City providing specified information</li> <li>• Provides the fiscal year for GRUC begins October 1 and ends September 30 each year</li> </ul>  |
| 7.08(5)                       | <ul style="list-style-type: none"> <li>• GRUC will diligently enforce and collect all fees, rates, or other charges for the services and facilities and take all aspects to enforce the collection</li> </ul>   |
| 7.08(6)                       | <ul style="list-style-type: none"> <li>• Provides that GRUC will ensure that no entity of the city, county, or state, or a county or city elected official, or an officer or director of the city or county or GRUC, or member, may dictate any employment for GRUC positions or interfere with the independence of GRUC officers, executives, or employees in the performance of their duties.</li> <li>• Provides that except for the purpose of an inquiry for information of public records, communications by the City Commission or the Alachua County Commission regarding GRUC members or business, must be through GRUC's secretary/treasurer</li> <li>• Members may not give an individual orders to or interfere with any direct or indirect subordinates of the CEO/GM</li> </ul> |
| 7.08(7)                       | <ul style="list-style-type: none"> <li>• Provides that GRUC will ensure members are granted complete access to its management, records, documents, and transactions, subject to reasonable advance notice to the CEO/GM</li> <li>• GRUC and each committee will have access to advisors as they deem necessary</li> <li>• Inquiry and information requests the CEO/GM deems excessive or interfering with work may be presented to the chairperson or mediation before filing a formal interference complaint by the CEO/GM with GRUC</li> </ul>  |
| 7.08(8)                       | <ul style="list-style-type: none"> <li>• Provides that GRUC will ensure that it does not dispose of or agree to sell or convey its used and useful assets exceeding 5% of the individual utility's total</li> </ul>   |

<sup>42</sup> The General Fund Transfer (GFT) is an annual transfer GRU makes to the City of Gainesville's general government based on a pre-defined formula. Gainesville Area Chamber of Commerce, *A Gainesville Solution: Energy Competitiveness Report* (November 2013), at p. 45, available at <http://www.gainesvillechamber.com/wp-content/uploads/2013/11/Chamber-Energy-Competitiveness-Report-Nov-2013.pdf> (last visited 03/22/2015). In 2014, the GRU transferred \$38.1 million into the City's General Revenue Trust, *id.*, by moving the decision to determine that amount out of the exclusive hands of the City Commissioners and the current GM (who answers to the City Commissioners) could result in a reduction in the funds given to the utility (which gives these funds because it doesn't pay taxes or dividends), but that could be offset by a corresponding reduction in utility rates.

|          |  |
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|          | assets unless approved by a majority vote of the City Commission   |
| 7.08(9)  | <ul style="list-style-type: none"> <li>• Provides that GRUC will ensure that the City will not grant any franchise for the furnishing of services which will compete with GRUC's utilities</li> <li>• Provides that the City or county will not levy any discriminatory fee upon GRUC or its utilities unless provided by general law</li> </ul>   |
| 7.08(10) | <ul style="list-style-type: none"> <li>• GRUC is prohibited from rendering or causing to be rendered any free utilities, or the like, from having preference rates for users within the same class</li> <li>• Provides that GRUC, City, and county all must use GRUC's utilities and the same rates, etc., applicable to other customers receiving like services under similar circumstances will be charged, such charges must be paid as they become due, and revenues received will be deposited and accounted for in the same manner as other revenues derived from such operation of the utilities</li> </ul>       |
| 7.08(11) | <ul style="list-style-type: none"> <li>• Requires GRUC to ensure that all existing City of Gainesville authority, laws, ordinances, resolutions, and administrative regulations, interpretations, franchises, and controls directly and indirectly affecting and controlling said utilities are conveyed to and exclusively vested within GRUC</li> <li>• Provides that all rights, claims, actions, orders, and legal or administrative proceedings involving GRUC immediately prior to the effective date of the act will continue, except as modified pursuant to GRUC's plenary powers granted by the act</li> </ul> |
| 7.08(12) | <ul style="list-style-type: none"> <li>• Provides that GRUC will ensure there is an ethics policy and code of business conduct policy that is reviewed at least biennially</li> <li>• Requires members, officers, executives, management, and supervisory employees to acknowledge annually in writing their compliance with GRUC's Code of Ethics and Business Conduct; waiver of this requirement may only be granted by a unanimous vote of GRUC sitting as a full commission</li> <li>• A member of GRUC requesting the waiver may not participate in deliberations, debate, or voting on the request</li> </ul>     |
| 7.08(13) | <ul style="list-style-type: none"> <li>• GRUC will ensure that the rights or privileges of a person who was a city utility employee immediately before the effective date of the act is not affected or impaired</li> </ul>  |

### Section 3

The bill includes a severability clause to prevent any invalidity found in one section from impairing any other section. The severability clause provides that the headings and sections of the act are intended to be read together and, if any portion or the application of the act to any person or circumstance is held invalid or unconstitutional, such a finding will not affect the other provisions or applications of the act if they can still be given effect.

The bill provides for transitional administrative needs and orderly compliance with the provisions of the act. Upon the effective date of the act, the utility functions describe in s. 7.08(5) of Section 1 of the bill are authorized and shall continue until amended, changed, or repealed by GRUC. The bill further authorizes the chairperson and secretary/treasurer, upon appointment, to execute documents required for the transition and to provide required direction and administration of utilities functions for up to 60 days during the selection of the CEO/GM or the conservator, interim, or temporary CEO/GM.

Additionally, the bill states that all laws or parts of laws in conflict with the act are repealed. It also provides that the City of Gainesville and Alachua County Charter provisions, ordinances, resolutions, decrees, or parts thereof, in conflict with the act are repealed to the extent of such conflict.

### Section 4

The bill provides that the following referendum question will be posed:

- Shall the Charter of the City of Gainesville be amended by creating the Gainesville Regional Utilities Commission, a municipally owned, independent, appointed, and representative commission?

\_\_\_\_\_Yes

\_\_\_\_\_No

### Section 5

The bill provides that, except for Sections 4 and 5 of the bill, the act only 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 conjunction with the next Presidential Preference Primary election to be held in Alachua County.

#### B. SECTION DIRECTORY:

Section 1: Repeals Section 3.06 of Article III in Section 1 of Chapter 90-394, Laws of Florida.

Section 2: Amends the charter of the City of Gainesville to establish the Gainesville Regional Utilities Commission to oversee and manage the city's municipal utility systems, which include the electric utility system, water utility system, wastewater utility system, re-use water utility system, natural gas utility system, communications utility system.

Section 3: Provides a severability clause; provides for transitional administrative needs and orderly compliance with the provisions of the act; and includes a provision repealing all laws or parts of laws in conflict with the act.

Section 4: Provides the question to be posed to electors when voting whether to approve the act at a referendum.

Section 5: Provides an effective date for all provisions except Sections 4 and 5 as upon approval by a majority of the voters at a referendum.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN?

WHERE?

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN? Referendum is required at the next primary election to be held in Alachua County.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

**B. RULE-MAKING AUTHORITY:**

The bill neither authorizes nor requires implementation through executive branch rulemaking.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The bill refers to the new utilities commission as both “Gainesville Regional Utilities Commission” and “Regional Utilities Commission of the City of Gainesville” at different locations throughout the bill. For clarity, one name should be adopted and used throughout.

The bill does not clearly specify ownership of utility systems after creation of GRUC. The bill grants GRUC “plenary authority for the express purpose of acquiring, constructing, operating, providing, financing, and otherwise having complete authority with respect to utilities.” The bill also authorizes GRUC to dispose of a limited portion of “its used and useful assets.” While the bill does not expressly provide for ownership, it provides a broad statement of authority and specifically allows GRUC to finance, acquire, and construct utilities and to dispose of “its” assets. Thus, the bill could be construed to allow GRUC to own utilities systems. These provisions could be clarified to ensure the bill is implemented as intended.

The bill refers throughout to the independence of GRUC from the City, prohibiting any manner of interference, limiting communications, and providing GRUC authority to act alone for certain purposes, including the establishment of future budgets. If the bill is not intended or construed to allow GRUC to own utilities systems in its own right, it appears to authorize GRUC to finance, 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 GRUC’s financing authority, it may be construed to authorize GRUC 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 GRUC to enter new lines of utility business in the name of the City.

The bill grants GRUC the power of eminent domain to acquire property (other than state or federal property) within Alachua County and, where permitted by law, outside of Alachua County for locating electric utility and water utility facilities, and for any other “nonstated” use by GRUC in the exercise of its plenary authority. The bill does not define “nonstated” uses.

The bill prohibits preferential rates for users of the same class or other subsidies. This may prohibit economic development incentives to attract or retain business.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 18, 2015, the Local Government Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Repeals a current charter provision, Section 3.06 of Article III in Section 1 of Chapter 90-394, Laws of Florida, relating to the general manager for utilities, because the bill renders that provision obsolete.
- Deletes the following provisions in Section 1 of HB 1325: 7.06(2), 7.07(4)-(10), 7.07(11)(d)-(e), 7.07(12), 7.07(15)-(21), 7.08(1)-(4), 7.08(6), 7.08(8), 7.08(10)-(16), 7.09(24)-(28), 7.08(31)(a)-(h), and 7.08(33).
- Reduces the salary for utility commissioners from 80% to 60% that of a City Commissioner.
- Reduces commission member terms from 5 to 4 years.
- Provides that the amount transferred the City’s General Revenue Fund cannot be more than 9% or less than 7% of gross revenues, after first paying other expenses.

On March 24, 2015, the Energy & Utilities Subcommittee adopted four amendments and reported the bill favorably as a committee substitute. The amendments:

- Clarify the qualifications for appointment to GRUC, including the qualifying fields of study.
- Clarify provisions concerning representation on GRUC by members who are qualified electors of the City of Gainesville and members who are qualified electors of the unincorporated area of Alachua County.
- Clarify provisions related to the suspension or removal of a voting member upon request of the remaining members to the Governor.
- Clarify that a member seeking a waiver of GRUC's Code of Ethics and Business Conduct is not prohibited from attending the meeting but is prohibited from participating in deliberations, debate, or vote on the request.
- Remove a provision that authorized GRUC to determine, in certain circumstances, that certain contracts of the City of Gainesville, its utility system, or GRUC, are invalid and voidable.

This analysis is drafted to the committee substitute as passed by the Energy & Utilities Subcommittee.