

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 1146

INTRODUCER: Appropriations Committee; Communications, Energy, and Public Utilities Committee;
and Senators Broxson and Mayfield

SUBJECT: Representation by the Public Counsel

DATE: April 17, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------------|-----------------------------|-----------|-----------------------------|
| 1. | <u>Caldwell</u> | <u>Caldwell</u> | <u>CU</u> | <u>Fav/CS</u> |
| 2. | <u>Sanders</u> | <u>Hansen</u> | <u>AP</u> | <u>Fav/CS</u> |
| 3. | <u> </u> | <u> </u> | <u>RC</u> | <u> </u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1146 requires the Office of Public Counsel (OPC) to provide legal representation for ratepayers living outside the jurisdictional boundary of a local government that provides water and wastewater service to those ratepayers in proceedings of municipal and other local government utilities in which water and wastewater rates are determined.

The bill appropriates \$1,229,130 in recurring funds from the General Revenue Fund to cover the costs of nine full-time equivalent positions, contractual services, and expenses, including travel, to implement this act.

The bill has an effective date of July 1, 2017.

II. Present Situation:

Section 350.0611, F.S., requires the OPC to provide legal representation for the people of the state in proceedings before the commission and in certain proceedings before counties.¹ The OPC has specific powers, including, but not limited to, the following:

- To recommend to the commission or the counties, by petition, the commencement of any proceeding or action or to appear, in the name of the state or its citizens, in any proceeding or

¹ Section 367.171(8), F.S.

action before the commission or the counties and urge therein any position which the OPC deems to be in the public interest, whether consistent or inconsistent with positions previously adopted by the commission or the counties, and utilize therein all forms of discovery available to attorneys in civil actions generally, subject to protective orders of the commission or the counties which shall be reviewable by summary procedure in the circuit courts of this state;

- To have access to and use of all files, records, and data of the commission or the counties available to any other attorney representing parties in a proceeding before the commission or the counties;
- In any proceeding in which the OPC has participated as a party, to seek review of any determination, finding, or order of the commission or the counties, or of any hearing examiner designated by the commission or the counties, in the name of the state or its citizens;
- To prepare and issue reports, recommendations, and proposed orders to the commission, the Governor, and the Legislature on any matter or subject within the jurisdiction of the commission, and to make such recommendations as he or she deems appropriate for legislation relative to commission procedures, rules, jurisdiction, personnel, and functions; and
- To appear before other state agencies, federal agencies, and state and federal courts in connection with matters under the jurisdiction of the commission, in the name of the state or its citizens.

Section 367.171(8), F.S., authorizes a county to regulate the rates of water and wastewater utilities in its jurisdiction that are subject to regulation. The county or its agency must follow the same procedures as the commission. These are the county proceedings in which the OPC may represent the people of the state.

Municipalities may operate water and wastewater utilities to serve their residents and may also serve residents immediately outside their jurisdictional boundaries. A municipality operating a water or sewer utility outside of its jurisdictional boundaries must charge consumers outside the boundaries rates, fees, and charges determined in one of the following manners:

- The municipal utility may charge the same rates, fees, and charges as consumers inside the municipal boundaries and, additionally, may add a surcharge of not more than 25 percent of such rates, fees, and charges to consumers outside the boundaries. Fixing of such rates, fees, and charges in this manner does not require a public hearing unless a hearing is provided for service to consumers inside the municipality.
- The municipal utility may charge rates, fees, and charges that are just and equitable and which are based on the same factors used in fixing the rates, fees, and charges for consumers inside the municipal boundaries. In addition, the municipality may add a surcharge not to exceed 25 percent of such rates, fees, and charges for those services to consumers outside the boundaries. However, the total of all such rates, fees, and charges for the services to consumers outside the boundaries may not be more than 50 percent in excess of the total amount the municipality charges consumers served within the municipality for corresponding service. Such rates, fees, and charges may not be fixed until after a public hearing at which all of the users of the water or sewer systems; owners, tenants, or occupants of property served or to be served; and all others interested have an opportunity to be heard concerning the proposed rates, fees, and charges. Any change or revision of the rates, fees, or charges

may be made in the same manner as such rates, fees, or charges were originally established, but if such change or revision is to be made substantially pro rata as to all classes of service, both inside and outside the municipality, a hearing or notice is not required.

The procedures apply to municipally owned water and wastewater utilities within the confines of a single county and may apply, pursuant to interlocal agreement, to municipally owned water and wastewater utilities beyond the confines of a single county.²

III. Effect of Proposed Changes:

The bill amends s. 350.0611, F.S., to require the OPC to provide legal representation for ratepayers living outside the jurisdictional boundary of a local government that provides water and wastewater utility service to those ratepayers in proceedings of municipal and other local government utilities in which water and wastewater rates are determined.

The bill has an effective date of July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The provisions of Article VII, s. 18, of the Florida Constitution, do not appear to apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Some ratepayers may have lower utility rates resulting from the OPC's representation before local governments that operate water and wastewater utilities.

C. Government Sector Impact:

The bill requires the OPC to represent the ratepayers living outside a municipality's jurisdictional boundaries in proceedings before local governments. An estimated 200 municipally owned water and wastewater utilities provide service to customers outside of

² Section 180.191, F.S.

its jurisdictional boundaries. Generally, utility rates are discussed and determined during workshops on a city's budget during the summer months and finalized at a local government council or commission meeting in the fall before the October 31 end of fiscal year. Although not every council or commission meets every year on this issue, significant travel is anticipated.

Currently, the OPC is comprised of 15 positions, of which six are attorneys.³ Outside legal counsel may be required where conflicts arise within a residential rate class.

The bill appropriates \$1,229,130 in recurring funds from the General Revenue Fund to cover the costs of nine full-time equivalent positions, contractual services and expenses, including travel, necessary to implement this act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Municipal electric utilities do not have formal proceedings in which rates are set other than when a local government council or commission or the governing authority meets to approve such rates. Therefore, the OPC does not have a clear point of entry at which to raise concerns. Moreover, it is unclear in what forum the OPC would challenge or appeal a rate or decision.

VIII. Statutes Affected:

This bill substantially amends section 350.0611 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Appropriations on April 13, 2017:

The Committee Substitute provides an appropriation of \$1,229,130 in recurring funds from the General Revenue Fund and nine full-time equivalent positions to the Office of Public Counsel for the implementation of this act.

CS by Communications, Energy, and Public Utilities on March 28, 2017:

The Committee Substitute removes the requirement that the Public Counsel represent residential ratepayers in rate structure proceedings before the Public Service Commission. The bill authorizes the Public Counsel to represent water and wastewater customers who live outside the jurisdictional boundaries in rate proceedings of a municipal water and wastewater utility. The requirement that the Public Counsel represent municipal and cooperative electric utility customers in ratemaking proceedings is removed.

³ The Office of Public Counsel, *Frequently Asked Questions*, www.floridaopc.gov, <http://www.floridaopc.gov/Pages/FAQs.aspx> (last visited April 7, 2017).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
