

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 Communications, Energy, and Public Utilities

BILL: SB 1146

INTRODUCER: Senator Broxson

SUBJECT: Representation by the Public Counsel

DATE: March 27, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Pre-meeting
2.			AGG	
3.			AP	
4.			RC	

I. Summary:

SB 1146 authorizes the Public Counsel to also provide legal representation under the following circumstances:

- Representing ratepayers living outside the jurisdictional boundary of a local government that provides a utility service to those ratepayers in proceedings of municipal and other local government utilities in which rates are determined.
- Representing residential ratepayers in proceedings of the Public Service Commission (commission) in which the rate structure is determined.

II. Present Situation:

Section 350.0611, F.S., requires the Public Counsel to provide legal representation for the people of the state in proceedings before the commission and in certain proceedings before counties.¹ The Public Counsel 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 action before the commission or the counties and urge therein any position which the Public Counsel 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;

¹ Section 367.171(8), F.S.

- In any proceeding in which the Public Counsel 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 which 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 Public Counsel may represent the people of the state.

Municipalities may operate electric and water and wastewater utilities to serve their residents and may also serve residents immediately outside their jurisdictional boundaries. A municipality providing electric services may not charge customers outside its boundaries more than it charges its customers inside its boundaries.² However, a municipality may charge its electric customers outside its jurisdiction a surcharge in the amount of its utility taxes it charges to the customers inside its jurisdiction.³ 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,

² *City of Tallahassee v. Fla. Pub. Serv. Comm'n*, 441 So.2d 620, 623-24 (Fla. 1983).

³ *Id.*

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.⁴

III. Effect of Proposed Changes:

The Public Counsel is authorized to also provide legal representation under the following circumstances:

- Representing ratepayers living outside the jurisdictional boundary of a local government that provides a utility service to those ratepayers in proceedings of municipal and other local government utilities in which rates are determined.
- Representing residential ratepayers in proceedings of the commission in which the rate structure is determined.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{5,6,7}

The county/municipality mandates provision of section 18, Article VII of the Florida Constitution, may apply because this bill may require counties or municipalities to expend funds or take action requiring the expenditure of funds as a result of the participation of the Public Counsel in rate setting proceedings and potentially if a rate change is appealed. The Revenue Estimating Conference has not examined the fiscal impact of this bill, however, the bill's impact may exceed the \$2 million threshold.

The bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

⁴ Section 180.191, F.S.

⁵ FLA. CONST. art. VII, s. 18(d).

⁶ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 13, 2017).

⁷ Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 13, 2017).

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:

Certain ratepayers may have lower utility rates as a result of Public Counsel representation in rate structure determinations before the commission and in some rate cases before local governments. However, such rates may be offset by additional rate case expense incurred by the utility to respond to the Public Counsel's defense that may be recovered from the ratepayer. In addition, some ratepayers may have lower utility rates as a result of Public Counsel representation before local governments that operate utilities.

C. Government Sector Impact:

According to the Public Counsel, developing a fiscal impact required a lot of speculation. However, using the best information available estimated the need for up to ten FTEs (4 legal, 3 accounting, 2 administrative) to represent the ratepayers living outside a municipality's jurisdictional boundaries in proceedings before local governments. It is estimated that there are approximately 200 municipally owned water and wastewater utilities and 32 electric utilities that provide service to customers outside of 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.

One additional FTE that has experience as a rate design expert would be necessary to represent residential customers in rate design proceedings before the commission. In addition, outside legal counsel where conflicts arise within a residential rate class may require outside legal counsel and rate design consulting experts. Thus, an additional appropriation would be necessary.

Based on the above discussion, Public Counsel estimated the following:

Personnel	\$912,200
Other Personnel Services – Contractual	314,800
Misc. office expenses including travel	<u>224,180</u>
TOTAL Incremental Budget Adjustment	\$1,451,180

VI. Technical Deficiencies:

None.

VII. Related Issues:

The commission has rate structure jurisdiction over public, municipal, and cooperative utilities. Traditionally, the Public Counsel does not participate in the rate setting of cooperative utilities as those utilities are owned by its customers.

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 Public Counsel does not have a clear point of entry at which to raise concerns. Moreover, it is unclear in what forum the Public Counsel 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 Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.