

# FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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**BILL #:** [HB 1523](#)

**TITLE:** Utility Services

**SPONSOR(S):** Busatta

**COMPANION BILL:** [SB 1704](#) (Calatayud)

**LINKED BILLS:** None

**RELATED BILLS:** None

## Committee References

[Economic Infrastructure](#)



[Intergovernmental Affairs](#)



[Commerce](#)

## SUMMARY

### Effect of the Bill:

The bill modifies the following provisions related to utility services:

- Requires certain public meetings and reporting for municipal utilities offering service to customers outside of the municipal boundaries.
- Limits the portion of municipal utility revenues earned from providing service to areas outside of municipal boundaries that may be used to fund non-utility related government functions.
- Limits the rates, fees, and charges that a municipal water or sewer utility may impose on customers outside its boundaries to no more than 25 percent above the amount the municipal utility charges customers within its own boundaries.
- Prohibits any surcharge if the municipality owns/operates a water or sewer treatment facility located within the boundaries of a separate municipality and serves customers within the separate municipality.
- Adds “board, agency, commission, or authority of any county, municipal corporation, or political subdivision” to the list of entities that are expressly preempted from prohibiting certain types or fuel sources of energy production or the use of appliances that use these specified types or fuel sources of energy production.

### Fiscal or Economic Impact:

The bill may have an indeterminate negative impact on certain local government revenues. *See below.*

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## ANALYSIS

### **EFFECT OF THE BILL:**

The bill establishes terms related to the provision of municipal utility services to customers outside the municipal boundaries and adds certain entities to a list of local government entities preempted from prohibiting or restricting the use of specified types or fuel sources of energy production.

### [Local Government Utility Services](#)

#### *Extension of Service*

Under the bill, a municipality that intends to offer retail electric, natural gas, water, or sewer utility service in another municipality or unincorporated area outside of the municipality’s boundaries must hold a public meeting in conjunction with the governing body of each municipality or unincorporated area to be served before a new agreement to provide such service, or a renewal, extension, or material amendment of an existing agreement, may take effect. The public meeting must be held within each municipality and unincorporated area to be served for the purpose of providing information and soliciting public input on:

- The nature of the service to be provided or changes to the service being provided;

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- The rates, fees, and charges to be imposed for the services provided or intended to be provided, including any differential with the rates, fees, and charges imposed for the same service on customers located within the boundaries of the serving municipality, the basis for the differential, and the length of time that the differential is expected to exist;
- The extent to which revenues generated from the provision of the service will be used to fund or finance non-utility government functions or services; and
- Any other matters deemed relevant by the parties to the agreement. (Section [1](#)).

Further, the bill requires that a new agreement to provide these utility services beyond a municipality's boundaries, or an extension, renewal, or material amendment to an existing agreement, must be in writing. Under the bill, any agreement to provide water or sewer utility service must comply with the other provisions of the bill limiting rates charged to customers outside city limits when providing such services. (Section [1](#)).

The bill requires that an appointed representative<sup>1</sup> of each municipality providing utility service in another municipality or unincorporated area outside of the municipality's boundaries must conduct an annual customer meeting in conjunction with the governing body of each municipality and unincorporated area in which it provides service. The purpose of this meeting is to receive public input on utility-related matters, including rates and service. The bill provides that this meeting does not need to be a separate public meeting conducted specifically for this purpose. (Section [1](#)).

### *Use of Revenues*

Under the bill, a municipality may not [transfer](#) more than 10 percent of the gross revenues it generates from electric, natural gas, water, or sewer service provided to customers outside its municipal boundaries to fund or finance non-utility governmental functions. Further, the bill requires that the revenues remaining after a transfer must be reinvested into the municipal utility or returned to customers living beyond the municipality's corporate limits. (Section [1](#)).

### *Reporting*

The bill requires that by November 1, 2025, and annually thereafter, each municipality which provides utility service outside its municipal boundaries report to the Public Service Commission (PSC), for each type of utility service it provides outside of municipal boundaries, the following information:

- The number and percentage of customers that receive utility service provided by the municipality at a location outside the boundaries of the municipality;
- The volume and percentage of sales made to such customers, and the gross revenues generated from such sales; and
- Whether the rates, fees, and charges imposed on customers that receive service at a location outside the municipality's boundaries are different than the rates, fees, and charges imposed on customers within the boundaries of the municipality, and, if so, the amount and percentage of the differential. (Section [1](#)).

The bill requires the PSC to compile this information and report it to the Speaker of the House of Representatives, the Senate President, and the Governor by January 31, 2025, and annually thereafter. The bill provides that it does not modify or extend the authority of the PSC otherwise provided by law with respect to any municipal utility that must report this information. (Section [1](#)).

### *Water and Sewer Rates and Charges*

The bill removes the provision from current law allowing a municipal water or sewer utility to add, for customers outside the municipal boundaries, a [surcharge](#) of up to 25 percent of the rates, fees, and charges imposed on customers within its boundaries without a public meeting. Furthermore, the bill changes the limit on the rates,

<sup>1</sup> The appointed representative must be an executive-level leadership employee of the municipality, or the municipality's utility authority, board, or commission, specifically appointed by the governing body of the municipality to serve as its representative for the purpose of the meeting.

fees, and charges such utilities can impose on customers outside of municipal boundaries to no more than 25 percent above the total amount the municipal water or sewer utility charges customers within the municipal boundaries, provided rates for outside customers are set in a public hearing using the same methods as rates for other customers. (Section [2](#)).

The bill limits the rates, fees, and charges that a municipal water or sewer utility that provides service to customers within the boundaries of a separate municipality, using a water treatment plant or sewer treatment plant located within the boundaries of that separate municipality, by requiring that such charges are no more than the rates, fees, and charges imposed on customers inside its own municipal boundaries. (Section [2](#)).

### [Preemption Over Utility Service Restrictions](#)

The bill adds “board, agency, commission, or authority of any county, municipal corporation, or political subdivision” to the list of entities expressly preempted from enacting or enforcing a resolution, ordinance, rule, code, or policy, or taking any other action that restricts or prohibits, or has the effect of restricting or prohibiting, the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to serve customers that these entities are authorized to serve:

- [Investor-owned electric utilities](#);
- [Municipal electric utilities](#);
- [Rural electric cooperatives](#);
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned [gas utilities](#);
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Certain propane dealers, dispensers, and gas cylinder exchange operators. (Section [3](#)).

The bill also adds ““board, agency, commission, or authority of any county, municipal corporation, or political subdivision” to the list of entities that may not enact or enforce a resolution, ordinance, rule, code, or policy or take any action that restricts or prohibits, or has the effect of restricting or prohibiting, the use of an [appliance](#), including a stove or grill, which uses the types or fuel sources of energy production described above. (Section [3](#)).

The bill adds that any “board, agency, commission, or authority of any county, municipal corporation, or political subdivision” action that violates the above preemptions over utility service restrictions and existed prior to July 1, 2021, is void. (Section [3](#)).

The bill provides an effective date of July 1, 2026. (Section [4](#)).

### **FISCAL OR ECONOMIC IMPACT:**

#### LOCAL GOVERNMENT:

The bill will likely have a negative impact on revenues for some local governments that own and operate water or sewer utilities, as it reduces the maximum amount that municipal water and sewer utilities can charge customers outside the municipal boundaries.

#### PRIVATE SECTOR:

The bill may result in cost savings to municipal water and sewer utility customers located outside of municipal boundaries. A municipal water or sewer utility may increase rates for other customers to mitigate revenue impacts.

## RELEVANT INFORMATION

### SUBJECT OVERVIEW:

#### Local Government Authority

Pursuant to s. 2(b), Art. VIII 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. Municipalities may exercise any power for municipal purposes, except when expressly prohibited by law.<sup>2</sup> 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>3</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 in other municipalities.

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.<sup>4</sup> Special districts are created by general law,<sup>5</sup> special act,<sup>6</sup> local ordinance,<sup>7</sup> or by rule of the Governor and Cabinet.<sup>8</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>9</sup> As of March 8, 2025, there are 603 active dependent<sup>10</sup> special districts and 1,442 active independent special districts in Florida.<sup>11</sup>

#### Local Government Utility Services

Many municipalities own and operate electric utilities and natural gas utilities and govern the operation of those utilities through ordinance, code, or policies. Currently, there are 35 municipal electric utilities in the state and 27 municipally owned natural gas utilities.<sup>12</sup> Municipal electric and natural gas utility rates are not directly regulated by the Florida Public Service Commission (PSC), however, the PSC does have jurisdiction over municipal electric utilities for matters related to rate structure, power plant transmission line site certification, general reporting jurisdiction, service territory and territory disputes, energy efficiency reporting, ten-year site plans, reporting on system hardening and resiliency, reporting on net metering, audits related to regulatory assessment fees, monitoring renewable energy, reporting on facilities inspection and vegetation management, and ensuring a

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<sup>2</sup> Section [166.021\(2\), F.S.](#), provides that any activity or power which may be exercised by the state or its political subdivisions is considered a municipal purpose.

<sup>3</sup> Pursuant to [s. 166.021\(3\), 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>4</sup> See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

<sup>5</sup> S. [189.031\(3\), F.S.](#)

<sup>6</sup> *Id.*

<sup>7</sup> S. [189.02\(1\), F.S.](#)

<sup>8</sup> S. [190.005\(1\), F.S.](#) See, generally, [s. 189.012\(6\), F.S.](#)

<sup>9</sup> *Local Gov't Formation Manual*, p. 60,

<https://www.flhouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3304&Session=2025&DocumentType=General+Publications&FileName=Local+Government+Formation+Manual+%5b2024-2026%5d.pdf> (last visited Mar. 8, 2025).

<sup>10</sup> Dependent special districts are under some control by a single county or municipality. S. [189.012\(2\), F.S.](#) An independent special district is any district that is not a dependent special district. S. [189.012\(3\), F.S.](#) A special district that includes more than one county is independent unless it lies wholly within the boundaries of a single municipality.

<sup>11</sup> Florida Department of Economic Opportunity, Official List of Special Districts Online, *State Totals*, available at <https://www.floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/official-list-of-special-districts> (last visited Mar. 8, 2023).

<sup>12</sup> Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry* (2024), p. 1, 12, available at <https://www.psc.state.fl.us/reports> (last visited Mar. 8, 2025).

reliable, coordinated power grid.<sup>13</sup> Many of these utilities provide service to customers located outside of the municipality's boundaries.

Municipalities are authorized by general law to provide water and sewer utility services.<sup>14</sup> With respect to public works projects, including water and sewer utility services,<sup>15</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."<sup>16</sup> A municipality may not extend or apply these corporate powers within the corporate limits of another municipality.<sup>17</sup> In general, however, local governments may enter into mutually advantageous agreements to provide services or facilities to other localities.<sup>18</sup> Further, the law specifically authorizes a municipality to 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.<sup>19</sup> Municipal water and sewer utility systems are exempt from PSC jurisdiction.

A municipality that operates a water or sewer utility outside of its municipal boundaries may impose higher rates, fees, and charges on customers receiving service outside of its corporate boundaries as compared to the rates, fees, and charges imposed on customers within its boundaries. The municipality can accomplish this in two ways:

- First, for customers outside of its boundaries, it may add a [surcharge](#) of up to 25 percent of the rates, fees, and charges imposed on customers within its boundaries. This mechanism does not require a public hearing.<sup>20</sup>
- Second, it may set separate rates, fees, and charges for customers outside its boundaries based on the same factors used to set rates for customers within its boundaries. It may add a surcharge of up to 25 percent of these charges, provided that the total of all such rates, fees, and charges for service to customers outside its boundaries may not exceed the total charges to customers within its boundaries by more than 50 percent for corresponding service. Rates set in this manner require a public hearing at which all users served or to be served by the water or sewer utilities and all other interested persons will have an opportunity to be heard concerning the proposed rates.<sup>21</sup>

There is no central repository for information concerning municipal water or sewer service rates that identifies municipalities that impose higher rates on customers outside of the municipal boundaries, the specific mechanism used by such municipalities to establish such rates, or the level of any additional charge or surcharge imposed.

## Municipal Funding

Current law authorizes municipalities to raise amounts of money which are necessary for the conduct of the municipal government. A municipality may do so by taxation and licenses authorized by Florida's constitution or general law, or by user charges or fees authorized by ordinance.<sup>22</sup> Municipalities routinely [transfer](#) a portion of their utility earnings to their general funds for non-utility purposes, though the amounts and percentages may vary

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<sup>13</sup> Presentation on *Florida Public Power*, Florida Municipal Electric Association (Feb. 9, 2023), slide 3, available at <https://www.flhouse.gov/Sections/Documents/publications.aspx?CommitteeId=3226&PublicationType=Committees&DocumentType=All&SessionId=99> (last visited Mar. 8, 2025).

<sup>14</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>15</sup> Other public works projects authorized under [s. 180.06, F.S.](#), include alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes, garbage collection and disposal, airports, hospitals, jails, golf courses, gas plants and distribution systems, and related facilities.

<sup>16</sup> [S. 180.02\(2\), F.S.](#)

<sup>17</sup> *Id.*

<sup>18</sup> See [s. 163.01, F.S.](#)

<sup>19</sup> [S. 180.19, F.S.](#)

<sup>20</sup> [S. 180.191\(1\)\(a\), F.S.](#)

<sup>21</sup> [S. 180.191\(1\)\(b\), F.S.](#)

<sup>22</sup> [S. 166.201, F.S.](#)

widely among municipalities.<sup>23</sup> These transfers may be limited in some circumstances by ordinance, but they are not governed by state law.

## State Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. State preemption precludes a local government from exercising authority in that particular area.<sup>24</sup>

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>25</sup> Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.<sup>26</sup> In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.<sup>27</sup> In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.<sup>28</sup>

## Preemption Over Utility Service Restrictions

Section [366.032, F.S.](#), expressly preempts the area of restricting utility services. It prohibits a municipality, county, special district, community development district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy, or taking any other action that restricts or prohibits, or has the effect of restricting or prohibiting, the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to serve customers that these entities are authorized to serve:

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Certain propane dealers, dispensers, and gas cylinder exchange operators.<sup>29</sup>

An electric utility is an entity which owns, maintains, or operates an electric generation, transmission or distribution system. An electric utility can be investor-owned, municipally-owned, or a rural electric cooperative.<sup>30</sup> There are four [investor-owned electric utilities](#) in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, and Florida Public Utilities Corporation.<sup>31</sup>

Additionally, there are thirty-five [municipal electric utilities](#) and eighteen [rural electric cooperatives](#).<sup>32</sup> Further, the Florida Municipal Power Agency was created through a series of interlocal agreements under [s. 163.01, F.S.](#), to

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<sup>23</sup> Presentation on *Florida Public Power*, Florida Municipal Electric Association *supra* n. 13, slide 6.

<sup>24</sup> Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Mar. 8, 2025).

<sup>25</sup> See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

<sup>26</sup> *Mulligan*, 934 So. 2d at 1243.

<sup>27</sup> *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

<sup>28</sup> See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

<sup>29</sup> S. [366.032, F.S.](#)

<sup>30</sup> S. [366.02, F.S.](#)

<sup>31</sup> Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry* (2024), p. 4, available at <https://www.psc.state.fl.us/reports> (last visited Mar. 8, 2025).

<sup>32</sup> *Id.* at 1.

provide wholesale power supply to municipal electric utilities.<sup>33</sup> Fuels that Florida electric utilities use to generate electric power include, but are not limited to: natural gas, nuclear, coal, and renewables like solar and biomass.<sup>34</sup>

A natural [gas utility](#) is a utility that supplies natural or manufactured gas, or liquefied gas with air admixture, or a similar gaseous substance by pipeline, to or for the public. A natural gas utility can be an investor-owned utility, special district, or municipal gas utility.<sup>35</sup> Currently, there are five investor-owned natural gas utilities, twenty-seven municipally owned natural gas utilities, and four gas special districts.<sup>36</sup>

Liquefied petroleum gas is any material which is composed predominately of any of the following hydrocarbons, or mixtures: propane, propylene, butanes, and butylenes.<sup>37</sup> A category I liquid petroleum gas dealer is someone who sells or offers to sell by delivery, or at a stationary location, any liquefied petroleum gas to a customer for industrial, commercial, or domestic use.<sup>38</sup> A category II liquefied petroleum gas dispenser is a person who operates a liquefied petroleum gas dispensing unit for the purpose of serving liquid products to the customer for industrial, commercial, or domestic use, and who sells, or offers to sell or lease equipment for the use of liquefied petroleum gas.<sup>39</sup> A category III liquefied petroleum gas cylinder exchange operator is a person who operates a storage facility used for the purpose of storing filled propane cylinders of certain capacities while awaiting sale to the customer, or a facility used for the storage of empty or filled containers which have been offered for exchange.<sup>40</sup>

Additionally, [s. 366.032, F.S.](#), prohibits a municipality, county, special district, community development district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy to take any action that restricts or prohibits, or has the effect of restricting or prohibiting, the use of an [appliance](#), including a stove or grill, which uses the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the [entities listed above](#). Current law provides an exception for circumstances in which the political subdivision must enforce the Florida Building Code or the Florida Fire Prevention Code.

Section [s. 366.032\(5\), F.S.](#), provides that any municipality, county, special district, community development district created pursuant to chapter 190, or political subdivision charter, resolution, ordinance, rule, code, policy, or action that violates the above preemptions over utility service restrictions and existed prior to July 1, 2021, is void.

#### Additional Relevant Information

[Art. VII, s. 18\(b\), of the Florida Constitution](#) states that the legislature may not enact any law that would reduce the authority municipalities or counties have to raise revenues in the aggregate, except upon approval of two-thirds of the membership of each house of the legislature.

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<sup>33</sup> Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth Beach, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Tallahassee, Wauchula, Williston, and Winter Park. Florida Municipal Power Agency, *Members*, <https://fmpa.com/members/> (last visited Mar. 8, 2025).

<sup>34</sup> Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, *supra* at n. 31, p. 2.

<sup>35</sup> [S. 366.04\(3\)\(c\), F.S.](#)

<sup>36</sup> Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, *supra* at n. 31, p. 14.

<sup>37</sup> [S. 527.01\(1\), F.S.](#)

<sup>38</sup> This category also includes “any person leasing or offering to lease, or exchanging or offering to exchange, any apparatus, appliances, and equipment for the use of liquefied petroleum gas; any person installing, servicing, altering, or modifying apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas; any person installing carburetion equipment; or any person requalifying cylinders.” [S. 527.01\(6\), F.S.](#)

<sup>39</sup> [S. 527.01\(7\), F.S.](#)

<sup>40</sup> [S. 527.01\(8\), F.S.](#)

## BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
<a href="#">Economic Infrastructure Subcommittee</a>			Keating	Bauldree
<a href="#">Intergovernmental Affairs Subcommittee</a>				
<a href="#">Commerce Committee</a>				