

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

KRISTEN YOUNG and
DAVID HAMMER,

CASE NO.: 01-2023-CA-004376

Plaintiffs

DIVISION: K

v.

CITY OF GAINESVILLE, FLORIDA,
HARVEY WARD, in his official capacity
as Mayor of the City of Gainesville, and
CRAIG CARTER, in his official capacity
as chairman of the Gainesville Regional
Utility Authority, a unit of the City of
Gainesville,

Defendants.

and

ASHLEY MOODY, in her official capacity
as Florida Attorney General,

Intervenor-Defendant.

SECOND AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT

COME NOW, the Plaintiffs by and through their undersigned attorneys and sue the Defendants and say:

1. This is an action for declaratory judgment and supplemental relief pursuant to Chapter 86, Florida Statutes.
2. Plaintiff is uncertain as to its rights and remedies with respect to HB 1645 (2023), a special law enrolled as Chapter 2023-348, Laws of Florida. A copy of Chapter

2023-348 is attached as Exhibit “A” to this Complaint.

3. Plaintiffs submit that Chapter 2023-348, Laws of Florida is unconstitutional and void *ab initio* and seek a declaration to the effect, together with supplemental relief

PARTIES

4. Plaintiff Kristen Young is a citizen, taxpayer and elector of the State of Florida and of the City of Gainesville and is a consumer of utility services provided by the City of Gainesville.

5. Plaintiff David Hammer is a citizen, taxpayer and elector of the State of Florida and of the City of Gainesville and is a consumer of utility services provided by the City of Gainesville.

6. Defendant City of Gainesville, Florida is a Florida municipal corporation created pursuant to Art. VIII §2 Florida Constitution and possesses all of the immutable constitutional home rule powers and limitations prescribed therein.

7. Defendant Harvey Ward, in his official capacity, serves as mayor of the City of Gainesville and was elected to serve in that office by the electorate of the City of Gainesville.

8. Defendant Craig Carter, in his official capacity, purportedly serves as chairman of the Gainesville Regional Utility Authority by virtue of his being elected to that position by the Authority at its initial meeting convened on October 4, 2023.

9. Defendant / Intervenor Ashley Moody moved to intervene in these proceedings in her official capacity as Florida Attorney General. Moody is entitled to intervene as of right to defend the special law which is the subject of this proceeding.

STANDING

10. Plaintiffs have standing to bring this action as citizens, taxpayers and electors of the State of Florida and of the City of Gainesville.

11. In addition, Plaintiffs have individual standing by virtue of the personal harm Chapter 2023-348, Laws of Florida inflicts upon them by taking away their constitutional right to vote for the persons who make legislative decisions for the City of Gainesville. Art. VIII §2(b) Florida Constitution. (“Each municipal legislative body shall be elective.”)

FACTS

12. Chapter 2023-348, Laws of Florida is a special law enacted during the 2023 regular session of the Florida legislature.

13. The governor of the state of Florida signed HB 1645 to make it a law.

14. By its terms, HB 1645 became law on July 1, 2023.

15. After the law was signed by the governor, HB 1645 was designated as Chapter 2023-348, Laws of Florida.

16. Since early in the twentieth century the City of Gainesville has owned and operated a public utility as a department of the City of Gainesville.

17. In recent years, and before Chapter 2023-348, Laws of Florida became effective, the City of Gainesville’s public utility department was known as the Gainesville Regional Utility and referred to as GRU.

18. Until the effective date of Chapter 2023-348, Laws of Florida, the City Commission of the City of Gainesville was the exclusive municipal governing body of the City of Gainesville

and all of its departments, including GRU.

19. The members of the City Commission of the City Gainesville are and were always elected by the electorate of the City of Gainesville, as now mandated by Art. VIII §2(b), Florida Constitution. (“Each municipal legislative body shall be elective.”)

20. Setting utility rates is a legislative function in Florida:

In Florida, it is a well recognized principle of law that rate-setting for municipal utilities is a legislative function to be performed by legislative bodies like local municipal governments and the commissions to which these bodies delegate such authority.

Mohme v. City of Cocoa, 328 So.2d 422 , 424 (Fla. 1976); *See, also*, City of Gainesville v. State, 863 So.2d 138, 147 (Fla. 2003) (“We begin with the well-settled principle that the establishment of utility rates is generally a legislative function.”); S. Florida Cargo Carriers Ass’n, Inc. v. State, Dept. of Bus. & Prof’l Regulation, 738 So.2d 391, 399 (Fla. 3d DCA 1999) (“Without exception courts have found that the setting of rates is a ‘legislative’ or ‘quasi-legislative’ function...”).

21. Until the effective date of Chapter 2023-348, Laws of Florida, the City Commission of the City of Gainesville was the municipal legislative governing body of GRU and exercised the legislative function and power of setting utility rates.

22. Prescribing the budget of a municipality is a legislative function in Florida. *See*, §166.241 Fla.Stat.

23. Until the effective date of Chapter 2023-348, Laws of Florida, the City Commission of the City of Gainesville was the municipal legislative governing body of GRU and had and exercised the legislative function of determining the amount of the net earnings of the utility system to transfer to the general government of the City of Gainesville to finance the provision of city services.

24. Approving the undertaking of municipal indebtedness by a municipality is a legislative function in Florida.

25. Until the effective date of Chapter 2023-348, Laws of Florida, the City Commission of the City of Gainesville was the municipal legislative governing body of GRU and had and exercised the legislative function of approving the sale of bonds and other forms of indebtedness secured by the earnings of the utility system to finance new construction of utility facilities and for other purposes.

26. Approving the acquisition of real and personal property is a legislative function in Florida. *See*, §166.401, Fla.Stat.

27. Until the effective date of Chapter 2023-348, Laws of Florida, the City Commission of the City of Gainesville was the municipal legislative governing body of GRU and exercised the legislative function of approving the acquisition of property for the use of the utility system by the exercise of the power of eminent domain.

28. Until the effective date of Chapter 2023-348, Laws of Florida, the City Commission of the City of Gainesville governed and operated the utility system as a department of the City of Gainesville under a manager appointed by the City Commission of the City of Gainesville.

29. Until the effective date of Chapter 2023-348, Laws of Florida, the City Commission of the City of Gainesville made all municipal legislative decisions and policies pertaining to GRU including, inter alia, setting rates [*Compare*, Mohme v. City of Cocoa, 328 So.2d 422, 424 (Fla. 1976)], authorizing financing, authorizing eminent domain actions [§166.401, Fla.Stat.] and entering and enforcing labor contracts with unionized employees [§§447.403, 447.309, Fla. Stat.].

30. Chapter 2023-348, Laws of Florida purports to establish a regional utilities authority known as the “Gainesville Regional Utilities Authority.” Chapter 2023-348, Laws of Florida, §2, sub §7.02. The purported “Gainesville Regional Utilities Authority” is hereinafter referred to as the “Authority.”

31. Chapter 2023-348, Laws of Florida purports to establish the Authority as a “unit of city government.” *See*, Chapter 2023-348, Laws of Florida, §2, sub §7.02.

32. Chapter 2023-348, Laws of Florida purports to free the Authority from “direction and control of the Gainesville City Commission,” except as otherwise provided. *See*, Chapter 2023-348, Laws of Florida, §2, sub §7.02.

33. The only “direction and control” Chapter 2023-348, Laws of Florida leaves in the City Commission of the City of Gainesville is:

a. The city shall “perform all acts necessary and proper to effectuate” the directions of Chapter 2023-348, Laws of Florida. Chapter 2023-348, Laws of Florida, §2, sub §7.10(1).

b. Each member of the Authority shall “be given an oath of affirmation by the Mayor,” or the mayor’s designee. Chapter 2023-348, Laws of Florida, §2, sub §7.07(2).

c. To receive recommendations from the Authority pertaining to “the acquisition and operation of a utility system not owned or operated by GRU at the date of the transfer of governing authority to the Authority.” Chapter 2023-348, Laws of Florida, §2, sub §7.03(1)(I).

34. The City of Gainesville has complied with the mandates imposed upon it by Chapter 2023-348 Laws of Florida.

35. Among, but not limited to, the powers and duties Chapter 2023-348, Laws of Florida purports to transfer to the Authority are:

a. “To manage, operate and control the utilities.” Chapter 2023-348, Laws of Florida, §2, sub §7.03(1)(a).

b. “To establish and amend rates, fees” etc. and “rules, regulations and policies governing the sale and use of services provided through the utilities.” Chapter 2023-348, Laws of Florida, §2, sub §7.03(1)(b).

c. “To acquire real and personal property, and to construct such projects as necessary, etc.” Chapter 2023-348, Laws of Florida, §2, sub §7.03(1)(c).

d. “To exercise the power of eminent domain, etc.” provided that “the title to all such property is vested in the city.” Chapter 2023-348, Laws of Florida, §2, sub §7.03(1)(d).

e. “To authorize the issuance of revenue bonds and other evidences of indebtedness of the city” secured by the revenues of the utility system. Chapter 2023-348, Laws of Florida, §2, sub §7.03(1)(e).

f. “To dispose of utility system assets only to the extent and under the conditions that the City Commission” may dispose of them. Chapter 2023-348, Laws of Florida, §2, sub §7.03(1)(f).

g. To determine the amount of the earnings of the utility system to transfer to the City of Gainesville to finance the operations of the general government of the city. Chapter 2023-348, Laws of Florida, §2, sub §7.03(1)(g).

h. “To appoint and remove” a chief operating officer and general manager of the utility system. Chapter 2023-348, Laws of Florida, §2, sub §7.03(1)(h).

36. Members of the Authority are not elected by the electorate of the City of Gainesville.

37. Members of the Authority are not appointed by the elected City Commission of the City of Gainesville.

38. Members of the Authority are appointed by the governor of the State of Florida, currently Rick DeSantis. *See*, Chapter 2023-348, Laws of Florida, §2, sub §7.05(2).

39. Prior to October 4, 2023, the governor of the State of Florida appointed members to serve as the Authority.

40. On October 4, 2023, the appointed members of the authority met in the meeting chamber of the City Commission of the City of Gainesville.

41. On October 4, 2023, Defendant Harvey Ward, as mayor of the City of Gainesville, administered and took the oath of office from each and every appointed member of the Authority then present including Defendant Craig Carter.

42. On October 4, 2023, after the administration and the taking of the oath of office, the members of the Authority then present elected Defendant Craig Carter as chairman of the Authority.

43. On October 4, 2023, Defendant Craig Carter accepted his election as chairman of the Authority.

PLAINTIFF'S CONSTITUTIONAL AND POLITICAL RIGHTS

44. This petition is governed by the application of Article VIII §2 1968 Florida Constitution that provides:

SECTION 2. Municipalities.—

(a) ESTABLISHMENT. Municipalities may be established or abolished and their charters amended pursuant to general or special law. When any municipality is abolished, provision shall be made for the protection of its creditors.

(b) POWERS. Municipalities shall have 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. **Each municipal legislative body shall be elective.**

(c) ANNEXATION. Municipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law.

(Emphasis added.)

45. This Petition invokes the operation of the final sentence in Article VIII §2(b):

”Each municipal legislative body shall be elective.”

This Article was proposed by the 1967 Constitution Revision Commission, was approved by a proposal of the Florida Legislature, was submitted by the Florida legislature to the people of the State for vote, and was adopted by the Florida electorate in 1968.

46. Under the 1968 Constitution, all municipal governing bodies that make legislative decisions for the municipality must be *elected*. The legislature has no power to peel off the Gainesville Fire Department, nor the finance department, nor the parks and recreation department, nor the planning department from the governance control of the elected City Commission of the City of Gainesville. Nor does it have the power to peel off the City of Gainesville’s utility department from governance and control by the elected City Commission of the City of Gainesville and place it under the exclusive control of a body appointed by the governor. Chapter 2023-348, Laws of Florida is unconstitutional and should be rendered so by order of this Court.

47. Chapter 2023-348, Laws of Florida violates Article I §4, 1968 Florida Constitution and on that independent grounds is void *ab initio*.

48. In addition to and independent of the foregoing basis of unconstitutionality, Chapter 2023-348, Laws of Florida injures Plaintiffs personally by depriving them of the Article VIII §2(b), Florida Constitution right to vote for the municipal governing body that makes legislative decisions for the governance of the Gainesville Regional Utility system. Accordingly, Chapter 2023-348 Laws of Florida is unconstitutional under Article I §4 1968 Florida Constitution.

49. The Florida Constitution does not create a general right to vote in all circumstances but does create the right of the electorate of a municipality to vote for the legislative governing body of the municipality. *See*, Article VIII §2(b), 1968 Florida Constitution. In Florida, once a right to vote is created by the constitution that right is thereafter protected and enforced by the courts. *See, e.g.*, *Joughin v. Parks*, 147 So. 273 (Fla. 1933); *Ervin v. Richardson*, 70 So.2d 585 (Fla. 1954).

50. Here, Chapter 2023-348, Laws of Florida deprives the Plaintiffs (and the electorate of the City of Gainesville) of the right to vote for *all members* of the governing board (the appointed Authority) that makes legislative decisions pertaining to GRU, leaving the voters the right to vote for no one at all.

51. Chapter 2023-348, Laws of Florida does not merely *omit* a particular means of voting preferred by the Plaintiffs from an array of permissible and readily available voting alternatives. Rather, Chapter 2023-348, Laws of Florida entirely *eliminates and denies* Plaintiffs' Article VIII §2(b), 1968 Florida Constitution right to vote for members of the municipal legislative body that legislates for and governs GRU.

52. The governor of the State of Florida has no constitutional power to appoint members of the governing bodies of Florida municipalities.

53. Chapter 2023-348, Laws of Florida purports to provide the governor the power to remove members of the Authority and to appoint new members to fill vacancies. Chapter 2023-348, Laws of Florida, §2, sub §7.05(4).

54. After the effective date of Chapter 2023-348, Laws of Florida, the electorate of the City of Gainesville has no right to vote for members of the governing body, i.e., the Authority, that makes municipal legislative decisions pertaining to the governance of GRU.

55. Until the effective date of Chapter 2023-348, Laws of Florida, Plaintiffs had the right guaranteed by Article VIII §2 Florida Constitution to vote for members of the municipal governing authority, *i.e.*, the City Commission of the City of Gainesville, that made all decisions, including municipal legislative decisions, pertaining to the governance, management and operation of the City of Gainesville's utility system.

VIOLATIONS OF THE FLORIDA CONSTITUTION

56. Chapter 2023-348, Laws of Florida deprives Plaintiffs of the right pursuant to Article VIII §2, Florida Constitution to vote for members of the municipal governing authority that makes all decisions, including municipal legislative decisions, pertaining to the governance, management and operation of the City of Gainesville's utility system by transferring all governing power, as stated above, to the members of the Authority all of which are appointed by the governor and are not elected by the electorate of the City of Gainesville.

57. Article I §5, Florida Constitution states:

The people shall have the right peaceably to assemble, to instruct their representatives, and to petition for redress of grievances.

58. Prior to the effective date of Chapter 2023-348, Laws of Florida, Plaintiffs had the right pursuant to Article 1 §5, Florida Constitution to petition an elective municipal legislative body, *i.e.*, the City Commission of the City of Gainesville, for redress of grievances that were within its power to resolve pertaining to the governance, control, management, and operation of the City of Gainesville's utility system.

59. Chapter 2023-348, Laws of Florida deprives Plaintiffs of the right pursuant to Article 1 §5, Florida Constitution to petition an elective municipal legislative body for

redress of grievances that are within its power to resolve pertaining to the governance, control, management, and operation of the City of Gainesville's utility system.

60. Article I §4, Florida Constitution states:

SECTION 4. Freedom of speech and press.—Every person may speak, write and publish sentiments on all subjects but shall be responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions and civil actions for defamation the truth may be given in evidence. If the matter charged as defamatory is true and was published with good motives, the party shall be acquitted or exonerated.

61. The right to vote is pure political speech protected by Article I §4, Florida Constitution.

62. Chapter 2023-348, Laws of Florida is unconstitutional and void *ab initio* because it violates Article VIII §2, Florida Constitution.

63. Chapter 2023-348, Laws of Florida is unconstitutional and void *ab initio* because it violates Article I §4, Florida Constitution.

64. In sum, exercising the Article VIII §2(b), 1968 Florida Constitution right to vote for the election of members of a Florida municipal legislative body is an expression of core political speech guaranteed by Article VIII §2, 1968 Florida Constitution and protected by Article I §4, Florida Constitution. The Florida legislature and Florida governor have no lawful power to eliminate, deny, or abridge that right. Moreover, the Florida legislature and Florida governor will have no power to eliminate, deny, or abridge the Article VIII §2(b), 1968 Florida Constitution right of the electorate of a Florida municipality to elect the members of a Florida elective municipal legislative body unless and until the electorate of the State of Florida votes to amend the Florida constitution to remove that constitutional right to vote. The electorate of the State of Florida has not voted

to amend the Florida Constitution to remove the constitutional right of the electorate of a Florida municipality to elect members of every municipal legislative body.

65. The Article VIII §2(b), 1968 Florida Constitution right to vote exists and may not be taken away by Chapter 2023-348, Laws of Florida. Plaintiffs respectfully submit that, pursuant to Article I §4, 1968 Florida Constitution and Article VIII §2(b), 1968 Florida Constitution this Court must enter a judgment declaring Chapter 2023-348, Laws of Florida to be unconstitutional on the independent grounds stated herein.

WHEREFORE, Plaintiffs pray for the following relief:

A. That this Court take jurisdiction over the parties and this cause;

B. That this Court enter a judgment declaring that Chapter 2023-348, Laws of Florida is unconstitutional and void *ab initio* because it empowers an unelected board (i.e. the Authority), appointed by the Governor to set rates for a municipal utility - a legislative function.

B. That this Court enter a judgment declaring that Chapter 2023-348, Laws of Florida is unconstitutional and void *ab initio* because it deprives Plaintiffs and all other electors of the City of Gainesville of the right to elect representatives to exercise legislative authority, including the control of the City's municipal utility and the establishment of utility rates.

C. That this Court enter a judgment declaring that Chapter 2023-348, Laws of Florida is unconstitutional and void *ab initio* because it deprives Plaintiffs of their right to vote, an aspect of speech protected by Article I, §4 of the Florida Constitution.

D. That this Court enter a judgment declaring that Chapter 2023-348, Laws of Florida is unconstitutional and void *ab initio* because it deprives Plaintiffs of their right to

petition their representatives for redress of grievances pursuant to Article I, §5 of the Florida Constitution.

E. That this Court provide supplemental relief, including a permanent injunction forever enjoining the City, the Authority and its various agents and employees, from enforcing Chapter 2023-348, Laws of Florida.

F. That this Court provide supplemental relief, including a permanent injunction forever enjoining Harvey Ward, in his official capacity as mayor of the City of Gainesville, Florida, from enforcing or implementing Chapter 2023-348, Laws of Florida, and to cease dealings with the Authority except as may be necessary to recover the City's property and to exercise the City's own home rule authority.

G. That this Court provide supplemental relief, including a permanent injunction forever enjoining Craig Carter, in his official capacity as chairman of the Authority, from taking any action on behalf of the Authority or exercising any authority or power under Chapter 2023-348, Laws of Florida.

H. That the Court grant such other and further supplemental relief as justice requires.

I. That Plaintiffs be awarded their costs in this action.

Respectfully Submitted,

BENJAMIN, AARONSON, EDINGER
& PATANZO, P.A.

/s/ Joseph W. Little
JOSEPH W. LITTLE, Esquire
Florida Bar No. 196749
3731 N.W. 13th Place
Gainesville, Florida 32605
(352) 273-0660
littlegnv@gmail.com

/s/ Gary S. Edinger
GARY S. EDINGER, Esquire
Florida Bar No.: 0606812
305 N.E. 1st Street
Gainesville, Florida 32601
(352) 338-4440/ 337-0696 (Fax)
GSEdinger12@gmail.com

Attorney for Plaintiffs

I HEREBY CERTIFY that a true and correct copy of the foregoing Second Amended Complaint was furnished to SEAN M. MCDERMOTT, Esquire [mcdermottsm@cityofgainesville.org]; KATHERINE L. MOCKLER, Esquire [mocklerkl@cityofgainesville.org] and DANIEL M. NEE, Esquire [needm@cityofgainesville.org], P.O. Box 490, Station 46 Gainesville, Florida 32627; and to EMILY WITTHOEFT, Esquire [Emily.witthoeft@myfloridalegal.com] and ANITA PATEL, Esquire [Anita.patel@myfloridalegal.com], by E-mail this 30th day of August, 2024.

/s/ Gary S. Edinger
GARY S. EDINGER, Esquire
Florida Bar No.: 0606812

EXHIBIT “A”

CHAPTER 2023-348

Committee Substitute for House Bill No. 1645

An act relating to the City of Gainesville, Alachua County; amending chapter 12760, Laws of Florida (1927), as amended by chapter 90-394, Laws of Florida, relating to the City's charter; repealing section 3.06 of the charter, relating to the general manager for utilities of Gainesville Regional Utilities; creating the Gainesville Regional Utilities Authority and establishing it as the governing board of Gainesville Regional Utilities; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 3.06 of Article III of section 1 of chapter 90-394, Laws of Florida, is repealed.

Section 2. Article VII is added to chapter 12760, Laws of Florida (1927), as amended by chapter 90-394, Laws of Florida, to read:

ARTICLE VII

GAINESVILLE REGIONAL UTILITIES AUTHORITY

7.01 Establishment.—

There is created a regional utilities authority to be known as the “Gainesville Regional Utilities Authority” (“Authority”). Gainesville Regional Utilities shall be governed by the Authority upon installation of the Authority’s members pursuant to this article. The Authority shall operate as a unit of city government and, except as otherwise provided in this article, shall be free from direction and control of the Gainesville City Commission. The Authority is created for the express purpose of managing, operating, controlling, and otherwise having broad authority with respect to the utilities owned by the City of Gainesville.

7.02 Definitions.—

For the purposes of this article, unless otherwise designated, or the context otherwise requires, the following terms have the following meanings:

(1) “Authority” means the Gainesville Regional Utilities Authority created in this article.

(2) “City” means the City of Gainesville.

(3) “City Commission” means the Gainesville City Commission.

(4) “County” means Alachua County.

(5) “Customer” means a person or an entity that makes application for and is supplied with service by GRU for its ultimate use.

(6) “Flow of funds” means the sum of required debt service, necessary operations and management expenses, a reasonable contribution to a utility plan improvement fund, identified SLA-related losses, and any other lawful purpose as provided in bond covenants.

(7) “Government services contribution” or “GSC” means the portion of revenues generated from rates, fees, assessments, and charges for the provision of utility services by the utility system which is annually transferred by the Authority to the City for use in funding or financing its general government municipal functions.

(8) “GRU” means Gainesville Regional Utilities.

(9) “Member” means a member of the Authority.

(10) “Net revenues” means the gross revenues less fuel revenues.

(11) “Service-level agreement” or “SLA” means a contract entered into by the Authority that establishes a set of deliverables that one party has agreed to provide another.

(12) “Utilities” means the electric utility system, water utility system, wastewater utility system, reuse water utility system, natural gas utility system, communications utility system, and such other utility systems as may be acquired by GRU in the future.

7.03 Powers and duties.—

(1) The Authority shall have the following powers and duties, in addition to the powers and duties otherwise conferred by this article:

(a) To manage, operate, and control the utilities, and to do all things necessary to effectuate an orderly transition of the management, operation, and control of the utilities from the City to the Authority, consistent with this article.

(b) To establish and amend the rates, fees, assessments, charges, rules, regulations, and policies governing the sale and use of services provided through the utilities.

(c) To acquire real or personal property and to construct such projects as necessary to operate, maintain, enlarge, extend, preserve, and promote the utility systems in a manner that will ensure the economic, responsible, safe, and efficient provision of utility services, provided that title to all such property is vested in the City.

(d) To exercise the power of eminent domain pursuant to chapter 166, Florida Statutes, and to use utility funds to appropriate or acquire property,

excluding federal or state property, for the purpose of obtaining, constructing, and maintaining utility facilities, provided that title to all such property is vested in the City.

(e) To authorize the issuance of revenue bonds and other evidences of indebtedness of the City, secured by the revenues and other pledged funds and accounts of the utility system, pursuant to Florida law. Upon resolution of the Authority establishing the authorized form, terms, and purpose of such bonds, for the purpose of financing or refinancing utility system projects, and to exercise all powers in connection with the authorization of the issuance, and sale of such bonds by the City as conferred upon municipalities by part II of chapter 166, Florida Statutes, other applicable state laws, and section 103 of the Internal Revenue Code of 1986. Such bonds may be validated in accordance with chapter 75, Florida Statutes. The Authority may not authorize the issuance of general obligation bonds. Such bonds and other forms of indebtedness of the City shall be executed and attested by the officers, employees, or agents of the City, including the chief executive officer/general manager (CEO/GM) or chief financial officer of the utility system, the Authority has so designated as agents of the City. The Authority may enter into hedging agreements or options for the purpose of moderating interest rates on existing and proposed indebtedness or price fluctuations of fuel or other commodities, including agreements for the future delivery thereof, or any combinations thereof.

(f) To dispose of utility system assets only to the extent and under the conditions that the City Commission may dispose of such assets pursuant to section 5.04 of Article V.

(g) To prepare and submit to the City Commission, at least 3 months before the start of the City's fiscal year, an annual budget for all Authority and GRU operations, including the amount of any transfer to the City. The term of the budget shall coincide with the City's fiscal year. The amount of any transfer is subject to the limitations specified in section 7.11.

(h) To appoint and remove a CEO/GM as provided in this article.

(i) To recommend, by resolution to the City Commission, the acquisition and operation of a utility system not owned or operated by GRU as of the date of transfer of governing authority to the Authority.

7.04 Authority members.—

(1) There shall be five members of the Authority appointed by the Governor. Each member shall be a person of recognized ability and good business judgment as identified by the Governor who is expected to perform his or her official duties in the best interests of GRU and its customers. Appointments shall be made as follows:

(a) One member shall be a residential customer with substantial knowledge of GRU, its operations, and its history.

(b) One member shall be a private, nongovernment customer consuming at least 10,000 kilowatt hours per month of electric usage during each of the previous 12 months. This member may be the owner or representative of the customer.

(c) Three members shall be competent and knowledgeable in one or more specific fields substantially related to the duties and functions of the Authority, including, but not limited to, law, economics, accounting, engineering, finance, or energy.

(2) All members of the Authority shall:

(a) Maintain primary residence within the electric service territory of GRU's electric utility system.

(b) Receive GRU electric utility system service at all times during the term of appointment.

(c) Not have been convicted of a felony as defined by general law.

(d) Be a qualified elector of the City, except that a minimum of one member must be a resident of the unincorporated area of the county or a municipality in the county other than the City of Gainesville.

(3) The composition of the Authority shall be adjusted upon expiration of any member's term, or upon any Authority vacancy, to reflect the ratio of total electric meters serving GRU electric customers outside the City's jurisdictional boundaries to total electric meters serving all GRU electric customers. For example, upon expiration of a member's term or upon an Authority vacancy, if the ratio of total electric meters serving customers outside the City boundaries to total electric meters serving all electric customers reaches 40 percent, the Governor must appoint a second member from outside the City boundaries to serve the next term that would otherwise be served by a qualified elector of the City. Conversely, upon expiration of any member's term or upon any Authority vacancy, if the ratio subsequently falls below 40 percent, the Governor must appoint a qualified elector of the City to serve the next term that otherwise would have been served by a resident from outside the City boundaries.

7.05 Member nominations and terms.—

(1) The Governor shall issue a public notice soliciting citizen nominations for Authority members within 120 days after the effective date of this article. The nomination solicitation period shall remain open for at least 30 days after the date of the public notice.

(2) The Governor shall appoint initial members to the Authority from among the nominees within 60 days after the close of the nomination solicitation period. The initial terms of office for the five members shall commence at 12 a.m. on October 1, 2023. The terms of the initial appointments shall be as follows: one member shall be designated to

serve until 12 a.m. on October 1, 2024; one member shall be designated to serve until 12 a.m. on October 1, 2025; one member shall be designated to serve until 12 a.m. on October 1, 2026; and two members shall be designated to serve until 12 a.m. on October 1, 2027.

(3) The Governor shall have a citizen nomination solicitation period for at least 30 days and appoint members for subsequent terms from among the nominees. Members appointed for subsequent terms shall be appointed for 4-year terms commencing at 12 a.m. on October 1 of the year in which they are appointed. If a member is appointed to complete an unexpired term, the member's term shall commence at the time of appointment and shall continue through the remainder of the unexpired term.

(4) The Governor shall fill any vacancy for the unexpired portion of a term within 60 days after the vacancy occurs if the remainder of the term exceeds 90 days.

7.06 Member compensation.—Beginning October 1, 2023, necessary expenses of members incurred in carrying out and conducting the business of the Authority shall be paid in accordance with Authority policy and procedures, subject to the approval of a majority of the members of the Authority. No supplemental benefits shall be provided for a member position.

7.07 Authority; oath; organization; and meeting.—

(1) The Authority shall initially meet at the chambers of the City Commission at 6 p.m. on Wednesday, October 4, 2023.

(2) Before taking office for any term, each member shall be given an oath or affirmation by the Mayor or his or her designee similar to the oath or affirmation required of a member of the City Commission.

(3) The first official action of the Authority shall be election of a chairperson and a vice chairperson from among its membership.

(4) The Authority shall meet at least once each month, except in case of unforeseen circumstances. All meetings of the Authority shall be noticed and open to the public, and minutes shall be kept as required by law, except that meetings related to settlement of then existing litigation may be held as allowed by law.

(5) The GRU general manager or his or her designee shall be responsible for making arrangements for and providing adequate notice for the initial meeting of the Authority.

7.08 Removal and suspension of members.—

(1) A member may be removed or suspended from office by the Governor in accordance with s. 112.501, Florida Statutes. In addition to the grounds

for removal set forth therein, a member may be removed by the Governor for failure to maintain the qualifications specified in section 7.04.

(2) The Authority may recommend to the Governor that a member be removed or suspended from office if it finds, by vote of at least three members, a reasonable basis for removal or suspension on one or more of the grounds set forth in s. 112.501, Florida Statutes, or for failure to maintain the qualifications specified in section 7.04. The Authority shall give reasonable notice of any proceeding in which such action is proposed and must provide the member against whom such action is proposed a written statement of the basis for the proposed action and an opportunity to be heard. The member against whom such action is proposed may not participate in the Authority's debate or vote on the matter.

7.09 Management and personnel.—

(1) A chief executive officer/general manager (CEO/GM) shall direct and administer all utility functions, subject to the rules and resolutions of the Authority. The CEO/GM shall serve at the pleasure of the Authority. Appointment or removal of the CEO/GM shall be by majority vote of the Authority. Until such time as the Authority appoints a CEO/GM, the sitting general manager of GRU shall serve as the CEO/GM. A sitting member of the Authority may not be selected as the CEO/GM.

(2) All officers and employees of the City who serve under the supervision and direction of the sitting general manager of GRU shall serve under the CEO/GM. The CEO/GM shall have the exclusive authority to hire, transfer, promote, discipline, or terminate employees under his or her supervision and direction.

(3) The Authority shall fix the salary of the CEO/GM, and the CEO/GM shall fix the salaries of all other employees who serve under his or her direction consistent with the annual budget approved by the Authority. The sitting general manager of GRU, as well as all officers and employees of the City who, by virtue of this article, become subject to the supervision and direction of the CEO/GM, shall continue without any loss of rights or benefits as employees under the pension plans and civil service merit system of the City existing as of the creation of the Authority.

7.10 General provisions.—

(1) The City and the Authority shall perform all acts necessary and proper to effectuate an orderly transition of the governance, operation, management, and control of all utility systems, properties, and assets held in the possession of GRU as of January 1, 2023, to the Authority, including, but not limited to, the creation of such instruments as are necessary for the Authority to function in accordance with this article. Notwithstanding the reorganization of the governance structure of the management of the utility system as provided in this section, the utility system shall continue to be

operated as a single enterprise and there shall be no change to the ownership of the utility system.

(2) All City ordinances, policies, rates, fees, assessments, charges, rules, regulations, and budgets related to operation of the utilities shall remain in effect until such time as the Authority, pursuant to the powers granted in this article, modifies any such item. In the event that any City charter provision, ordinance, resolution, decree, or any part thereof conflicts with the provisions of this article, the provisions of this article shall govern. This subsection is not intended to and shall not interfere with existing contractual arrangements between the City and county, regardless of whether such arrangements are reflected in charter provisions, ordinances, resolutions, decrees, or any part thereof.

(3) All rights, responsibilities, claims, and actions involving GRU as of the transfer to the Authority shall continue, except as may be modified by the Authority under the powers granted by this article and consistent with law.

(4) No franchise, right-of-way, license, permit or usage fee or tax may be levied by the City upon the Authority or the utilities unless allowed by general law.

(5) Any utility advisory board created by the City Commission shall have no role with respect to the Authority.

(6) No member of the Authority shall be individually responsible for Authority debts or liabilities.

(7) The Authority shall develop an ethics policy and a code of business conduct that shall be reviewed at least biennially.

(8) In order to provide for the transitional administrative needs and orderly compliance with the provisions of this act, the chairperson of the Authority or his or her designee is authorized to execute documents required for the transition.

7.11 Limitation on government services contribution.—

(1) MAXIMUM CAP ON GSC.—For any fiscal year, the GSC may not exceed aggregate utility system net revenues less flow of funds.

(2) DEBT SERVICE AND AVOIDANCE.—Any remaining funds, after deductions for flow of funds and GSC, shall be dedicated to additional debt service or utilized as equity in future capital projects.

7.12 Limitation on utility directives.—The Authority and the CEO/GM, in making all policy and operational decisions over the affairs of the utility system as contemplated under the provisions of this act, shall consider only pecuniary factors and utility industry best practices standards, which do not include consideration of the furtherance of social, political, or ideological

interests. Appropriate pecuniary factors and utility industry best practices are those which solely further the fiscal and financial benefit of the utility system and customers. This provision does not prohibit the establishment and application of rate structures based on utility usage.

Section 3. This act shall take effect July 1, 2023.

Approved by the Governor June 28, 2023.

Filed in Office Secretary of State June 28, 2023.