

City of New Smyrna Beach

210 SAMS AVENUE
NEW SMYRNA BEACH, FLORIDA 32069-9985
AREA CODE 904/427-4166

GEORGE E. MUSSON, MAYOR
DONALD G. WILLIAMS, VICE-MAYOR
LOIS J. BRICKLEY, COMMISSIONER
RAYMOND R. TROVATO, COMMISSIONER
JAMES D. POWELL, COMMISSIONER

UTILITIES COMMISSION
CITY OF NEW SMYRNA BEACH, FL

E. IRENE BECKHAM, CITY MANAGER
LYNDA L. SCHAIDT, CITY CLERK
MARGARET T. BREWER, CITY ATTORNEY
JOHN E. HAGOOD, FINANCE DIRECTOR

JUL 10 1985

July 8, 1985

RECEIVED
Administration

TO: The Honorable Mayor and City Commission
FROM: Margaret T. Brewer, City Attorney
RE: Utilities Commission Local Bill

Enclosed for your information is a copy of HB1149 on the referenced matter which was substituted for SB538 and became law without the Governor's signature on 6/12/85.

Should you have any questions with regard to the foregoing, please feel free to contact me.



MARGARET T. BREWER

MTB/ocw

cc: E. Irene Beckham, City Manager
R. Ronald Hagen, Director, Utilities Commission

"World's Safest Bathing Beach"

1	A bill to be entitled	1: btc
2	An act relating to the Utilities Commission of	1.0/1
3	the City of New Smyrna Beach, Volusia County;	1.2
4	amending chapter 67-1754, Laws of Florida;	
5	limiting the length and number of terms of	1.3
6	members of the commission; providing that the	
7	commission may extend city utilities beyond the	
8	corporate limits of the city only upon approval	1.4
9	of the city commission; providing for city	
10	commission review and approval of the	1.5
11	commission budget; providing for approval of	1.6
12	the city commission before issuing or refunding	
13	revenue certificates; providing for city	1.7
14	commission approval before entering into	
15	certain contracts; providing for the fiscal	
16	year required by general law; providing	1.8
17	severability; providing an effective date.	
18		
19	Be It Enacted by the Legislature of the State of Florida:	: enc
20		
21	Section 1. Chapter 67-1754, Laws of Florida, is	: t
22	amended to read:	
23	Section 1. <u>Created; definitions.</u> -- There is hereby	1.10
24	created and made a part of the government of the City of New	1.12
25	Smyrna Beach a utilities commission to be known and designated	
26	as "Utilities Commission, City of New Smyrna Beach, Florida,"	1.13
27	which shall consist of five (5) members. For the purposes of	1.14
28	this act, unless otherwise designated, the word commission	
29	shall mean the utilities commission of New Smyrna Beach and	1.15
30	the word commissioner shall mean a member of the said	
31	utilities commission. <u>Except as otherwise authorized the</u>	: lus

CODING: Words in ~~struck through~~ type are deletions from existing law; words underlined are additions.

1 utilities commission shall function the same as it previously 1.18
 2 functioned under chapter 67-1754, Laws of Florida. This act 1.19
 3 shall not supersede or alter the general law in effect and
 4 agreements entered into prior to the effective date of this 1.20
 5 act.

6 Section 2. Members; appointment; term; vacancy; 1:t
 7 removal.--The commission shall consist of five (5) members to 1.23
 8 be appointed by the city commission. One (1) commissioner 1.24
 9 shall serve until the first Wednesday in September 1967, one
 10 (1) shall serve until the first Wednesday in September 1968, 1.25
 11 one (1) shall serve until the first Wednesday in September 1.26
 12 1969, one (1) shall serve until the first Wednesday in
 13 September 1970 and one (1) shall serve until the first 1.27
 14 Wednesday in September 1971. The city commissioners shall 1.28
 15 appoint a replacement for any commissioner whose term expires
 16 and the replacement shall be appointed for a term of three (3) 1.29
 17 ~~five (5)~~ years. Should a vacancy occur on the utilities 1.30
 18 commission by virtue of resignation, death or removal, the
 19 unexpired term shall be filled as provided above. Any 1.32
 20 commissioner may be removed from office upon a majority vote
 21 of the city commissioners for malfeasance, misfeasance, 1.33
 22 nonfeasance, conviction of a felony or upon recommendation of
 23 a majority of the utility commissioners. 1.34

24 Section 3. Members; qualifications.--Each commissioner 1:t
 25 shall be a qualified elector and freeholder in New Smyrna 1.36
 26 Beach, but no employee or elected or appointed officer of the 1.37
 27 city shall be a commissioner and no commissioner shall serve
 28 more than three consecutive terms, who has served two (2) 1.38
 29 consecutive terms of five (5) years each shall succeed 1.39
 30 himself.

1 Section 4. Meetings; rules and regulations; :t
2 officers.--The commission shall meet at least once each month .41
3 at the offices of the commission. All meetings of the .42
4 commission shall be open to the public and minutes shall be
5 kept of all meetings. The commission shall have authority to .44
6 promulgate rules and regulations for the conduct of its
7 meetings and the operation of its business. At the regular .46
8 meeting of the commission in September of each year, the
9 commissioners shall elect a chairman, a vice-chairman, a .47
10 secretary and a treasurer from its membership; however, the
11 office of secretary and treasurer may be combined. .48
12 Section 5. Authority to appoint and employ necessary :t
13 personnel.--The commission shall have the power to appoint and .50
14 employ engineers, auditors, attorneys and such other personnel .51
15 as may be necessary for the efficient operation of the city's .52
16 utilities and the management of its business and affairs.
17 Section 6. Authority over city's utilities.--The :t
18 commission shall, pursuant to the New Smyrna Beach Charter, .54
19 manage, operate ~~have full and exclusive authority over the~~ .55
20 ~~management, operation and control of~~ all of the city's .56
21 utilities and shall employ and discharge at their pleasure all
22 employees whose services are performed in any manner in .57
23 connection with said utilities.
24 Section 7. Commissioners' salary, expenses.--The :t
25 commissioners shall be paid such salary as may from time to .59
26 time be set by the city commission of the City of New Smyrna
27 Beach, but no more than one hundred dollars (\$100.00) each .60
28 month, and in addition shall be paid necessary expenses .61
29 incurred in carrying on and conducting the business of the
30 commission subject to the approval of the city commission. .62
31

1	Section 8. <u>Monthly statements; fiscal year; annual</u>	1:t
2	<u>audit.</u> --The commission shall submit to the city commission a	1.64
3	monthly statement showing all sums or amounts received,	1.65
4	operating expenses, amount charged to depreciation and	
5	extensions, reserve fund and amount appropriated to interest	1.66
6	and sinking fund. The fiscal year of the commission shall	1.67
7	begin <u>October 1</u> January 1 and end <u>September 30</u> December 31 of	1.69
8	each year and the books and records of the commission shall be	1.70
9	audited by an independent certified public accountant as of	1.71
10	the close of business of each fiscal year.	
11	Section 9. <u>General powers and authority.</u> --The	1:t
12	commission shall have full and exclusive power and authority	1.74
13	to prescribe rules, rates and regulations governing the sale	
14	and use of electricity, water, gas and sewage collection and	1.75
15	treatment wherever such services are furnished by said	1.76
16	commission and to change the same at its pleasure, after	
17	conducting a public hearing or hearings pertaining to rate	1.77
18	changes. The commission is authorized to furnish electricity,	1.79
19	power, water, gas and sewage collection and treatment to	
20	private individuals and corporations wherever the same may be	1.80
21	required and feasible as determined by the commission and for	1.81
22	said purpose the commission shall have the right to acquire,	
23	construct, maintain, extend, improve and develop electric	1.82
24	production and distribution systems, water production and	1.83
25	distribution facilities and systems, gas production and	
26	distribution systems and sanitary sewer facilities and	1.84
27	systems, including the right to construct and maintain	
28	electric lines, water and gas mains and sewers in, along and	2.1
29	under all public streets and highways and to contract with and	2.2
30	receive grants and contributions from the United States or any	
31	of its agencies or departments, the state and any	2.3

1 municipality, public body, corporation, partnership or
 2 individual for such purposes. The commission may extend city 2:1us
 3 utilities beyond the corporate limits of the City of New
 4 Smyrna Beach in conformance with the requirements of Chapter 2:6
 5 366, Florida Statutes, only upon approval by ordinance of the 2:7
 6 city commission and the commission may enter into a contract 2:8
 7 for a term of more than four (4) years only after approval by
 8 ordinance of the city commission. The city commission may not 2:10
 9 withhold its approval or deny passage of an ordinance where
 10 such withholding or denial would cause the commission to 2:11
 11 violate any of the covenants or terms of its bond resolutions 2:12
 12 and related contracts, resolutions, and documents. The 2:13
 13 commission shall prepare and submit its budget for the ensuing
 14 year to the city commission on or before June 1 of each year, 2:14
 15 setting forth its estimated gross revenues and estimated
 16 requirements for operations and maintenance expenses, debt 2:15
 17 service, and depreciation. A copy of the budget shall be 2:16
 18 published once in a newspaper of general circulation in the
 19 city during the month of June. The commission shall adopt the 2:18
 20 budget for the ensuing year only upon approval by ordinance of
 21 the city commission. The city commission may not withhold its 2:20
 22 approval or deny passage of an ordinance approving the budget 2:21
 23 where such withholding or denial would cause the commission to
 24 violate any of the covenants or terms of its bond resolutions 2:22
 25 and related contracts, resolutions, and documents.
 26 Section 10. Billing and collection of fees and 1:t
 27 charges; disposition of funds collected.--The commission shall 2:24
 28 have the exclusive power and authority to bill and collect the 2:25
 29 prescribed fees or charges for all services and utilities
 30 under its control and when collected, the flow of funds shall 2:26
 31 be: First, the payment of all operating and maintenance

1 expenses of said utilities; second, the funding of all 2.27
 2 reserves required by revenue certificates issued by the city 2.28
 3 of said commission for projects under commission control
 4 including the debt service payments of all such revenue 2.29
 5 certificates as same become due; third, the payment to the
 6 general fund of the city a sum equal to six (6) percent of the 2.30
 7 gross revenues from utilities under commission control; such 2.31
 8 payments shall be made monthly. The surplus shall be paid 2.32
 9 annually to the general fund of the city after reserving an
 10 adequate fund for operation and maintenance expenses, capital 2.33
 11 improvements and line extensions as determined by the 2.34
 12 commission.

13 Section 11. Acquisition of property by eminent domain; 1:t
 14 title.--The commission is empowered, by its duly constituted 2.36
 15 authorities, to exercise the right of eminent domain to 2.37
 16 appropriate property, except state or federal, for the purpose
 17 of obtaining, constructing and maintaining electric plants, 2.38
 18 substations and distribution lines; water or gas mains; 2.39
 19 reservoirs and pumping stations; sewer lines, pumping stations
 20 and disposal or processing plants and to acquire all such 2.40
 21 lands, waters and lands adjacent to waters which the
 22 commission judges may be necessary for the full and complete 2.41
 23 construction, maintenance and operation of any utility. The 2.43
 24 title to all property, real or personal, owned or acquired by
 25 the commission shall be vested in the city of New Smyrna 2.44
 26 Beach.

27 Section 12. Authority to shut off and discontinue 1:t
 28 water, electricity, or other utilities.--The commission shall 2.46
 29 have the power to shut off and discontinue the supplying of 2.47
 30 water, electricity or any other utilities or services now or
 31 hereafter under the control, management or jurisdiction of the 2.48

1	commission to any and all users for violation of any of the	2.49
2	rules or regulations pertaining to the sale, distribution or	2.50
3	use of such utilities and services and for nonpayment, when	
4	due, of the fees, rentals or other charges for utilities and	2.51
5	services. Regulations governing the shutting off and	2.52
6	discontinuance of any of such utilities and services and the	2.53
7	terms and conditions for the restoration of such utilities and	
8	services, including interest and charges for shutting off and	2.54
9	discontinuance or the restoration of said utilities and	
10	services may be adopted by the commission.	2.55
11	Section 13. <u>Agreements with holders of revenue bonds</u>	1:t
12	<u>and other obligations.</u> --The commission shall have power and	2.57
13	authority to make agreements and covenants with the city of	2.59
14	New Smyrna Beach and the holders of any revenue bonds or other	
15	obligations issued to finance, in whole or in part, any	2.60
16	repairs, extensions or improvements of any utility with	
17	respect to the filing and collecting of fees, rentals and	2.61
18	other charges for services and utilities. All such agreements	2.62
19	and covenants shall constitute and be deemed valid contracts	
20	between the commission and the holders of any revenue bonds or	2.63
21	other obligations and may be enforced by any holder of such	2.64
22	revenue bonds or any other obligations in any court of	
23	competent jurisdiction subject, however, to any provisions for	2.65
24	enforcement which may be contained in such agreements or	
25	covenants or in the resolution or resolutions of the governing	2.66
26	body of the city or the commission pursuant to which such	2.67
27	obligations were issued.	
28	Section 14. <u>Borrowing money.</u> --The commission, upon a	1:t
29	majority vote, is hereby authorized to borrow at any time an	2.70
30	amount of money equal to ten (10) percent of the book value of	
31	the electric and water plants for any six (6) month period and	2.73

1	to pay interest on such sum borrowed at a rate not to exceed	2.74
2	the then prevailing interest rate and to issue its promissory	
3	note or notes as evidence of said indebtedness which notes	2.75
4	shall be signed by the chairman of the commission and the	
5	secretary thereof, provided that at no time shall such	2.76
6	promissory note or notes exceed ten (10) percent of the book	2.77
7	value of such plants and provided further that money so	
8	borrowed shall be expended only for current operating	2.78
9	expenses.	
10	Section 15. <u>Revenue certificates and promissory</u>	1:t
11	<u>notes.--The commission shall, upon the approval by ordinance</u>	1:lus
12	<u>of the city commission, after conducting a public hearing or</u>	2.82
13	hearings, have the right, power and authority to issue revenue	
14	certificates or promissory notes for the purpose of paying all	2.83
15	or a part of the costs of acquisition, construction,	
16	repairing, extensions, additions, equipping and the ..	2.84
17	reconstruction of any of the city's utilities. <u>The city</u>	1:lus
18	<u>commission may not withhold its approval or deny passage of an</u>	
19	<u>ordinance where such withholding or denial would cause the</u>	3.2
20	<u>commission to violate any of the covenants or terms of its</u>	
21	<u>bond resolutions and related contracts, resolutions, and</u>	3.3
22	<u>documents.</u> All of such revenue certificates or promissory	3.4
23	notes while authorized and issued by the commission shall be	3.5
24	obligations of the city of New Smyrna Beach and no referendum	
25	or freeholder election shall be required as a condition	3.6
26	precedent to the issuance of such revenue certificates or	
27	promissory notes. All revenue certificates shall be offered	3.8
28	for sale to not less than three (3) responsible bond brokers	3.9
29	and the best bid accepted unless, in the discretion of the	
30	commission, a better bid may be obtained by negotiation. In	3.11
31	such case the commission shall have the right to reject all	

1 bids and sell said certificates upon the best terms offered 3.12
2 therefor.

3 (1) Revenue certificates issued under the provisions 1:t
4 of this act shall be payable from the revenues derived from 3.14
5 the operation of the city's utilities or services under the
6 supervision, operation and control of the commission and from 3.15
7 any other funds legally available therefor.

8 (2) The commission shall not convey or mortgage any 1:t
9 property or facility or any part thereof as security for the 3.18
10 payment of revenue certificates.

11 (3) In the discretion of the commission, each or any 1:t
12 issue of such revenue certificates may be secured by a trust 3.20
13 agreement by and between the commission and a corporate
14 trustee which may be any trust company or bank having the 3.21
15 powers of a trust company within or outside of the state.
16 Such trust agreement may pledge or assign the revenues to be 3.22
17 received by the commission. The resolution providing for the 3.23
18 issuance of revenue certificates or such trust agreement may
19 contain such provisions for protecting and enforcing the 3.24
20 rights and remedies of the certificate holders as may be 3.25
21 reasonable, proper and not in violation of law, including
22 covenants setting forth the duties of the commission in 3.26
23 relation to the acquisition, construction, improvements,
24 maintenance, operation, repair, equipping and insurance of the 3.27
25 facilities, and the custody, safeguarding and application of 3.28
26 all moneys. It shall be lawful for any bank or trust company 3.29
27 incorporated under the laws of this state to act as such 3.31
28 depository and to furnish such indemnifying bonds or to pledge
29 such securities as may be required by the commission. Such 3.33
30 resolution or such trust agreement may restrict the individual
31 right of action by certificate holders as is customary in 3.34

1	trust agreements securing bonds or debentures of corporations.	
2	In addition to the foregoing, such resolution or trust	3.35
3	agreement may contain such other provisions as the commission	3.36
4	may deem reasonable and proper for the security of certificate	
5	holders. Except as this chapter otherwise provides, the	3.37
6	commission may provide, by resolution or by trust agreement,	3.38
7	for the payment of the proceeds of the sale of the revenue	
8	certificates and the revenues of the utilities and services to	3.39
9	such officer, board or depository as it may determine for the	
10	custody thereof and for the method of disbursement thereof	3.40
11	with such safeguards and restrictions as it may determine.	3.41
12	All expenses incurred in carrying out such trust agreement may	3.42
13	be treated as a part of the cost of operation of the utilities	3.43
14	affected by such trust agreement.	
15	(4) The resolution or trust agreement providing for	1:t
16	the issuance of the revenue certificates may also contain such	3.45
17	limitations upon the issuance of additional revenue	
18	certificates as the commission may deem proper and such	3.47
19	additional certificates shall be issued under such	
20	restrictions or limitations as may be prescribed by the	3.48
21	resolution or trust agreement.	
22	Section 16. <u>Refunding revenue certificates.--The</u>	1:t
23	<u>commission, upon approval by ordinance of the city commission,</u>	3.50
24	is authorized to provide by resolution for the issuance of	3.51
25	refunding revenue certificates for the purpose of refunding	3.52
26	any revenue certificates heretofore issued by the city of New	
27	Smyrna Beach then outstanding or issued under the provisions	3.54
28	of this chapter. The commission is further authorized, <u>upon</u>	3.56
29	<u>approval by ordinance of the city commission,</u> to provide by	3.57
30	resolution for the issuance of revenue certificates for the	
31	combined purpose of:	3.58

1	(1) Paying the cost of any acquisition, construction,	1:t
2	extension, addition, improving, equipping or reconstruction of	3.60
3	a facility or facilities of the commission;	3.61
4	(2) Refunding revenue certificates heretofore issued	1:t
5	by the city of New Smyrna Beach and of the commission which	3.64
6	shall theretofore have been issued under the provisions of	
7	this chapter and shall then be outstanding.	3.65
8		
9	The issuance of such obligations, the maturities and other	1:j
10	details thereof, the rights and remedies of the holders	3.67
11	thereof, the rights, powers, privileges, duties and	
12	obligations of the commission with respect to the same shall	3.68
13	be governed by the foregoing provisions of this chapter	
14	insofar as the same may be applicable. <u>The city commission</u>	1:lus
15	<u>may not withhold its approval or deny passage of an ordinance</u>	
16	<u>when such withholding or denial would cause the commission to</u>	3.71
17	<u>violate any of the covenants or terms of its bond resolutions</u>	3.72
18	<u>and related contracts, resolutions, and documents.</u>	
19	Section 17. <u>Legal status of revenue certificates or</u>	1:t
20	<u>other obligations.</u> --Any revenue certificates or other	3.74
21	obligations issued pursuant to this chapter shall be and	3.75
22	constitute legal investments for bonds, savings banks,	
23	trustees, executors, administrators and all other fiduciaries	3.76
24	for all state, municipal and public funds and shall also be	3.77
25	and constitute securities eligible for deposit as security for	
26	all state, municipal or other public funds notwithstanding the	3.78
27	provisions of any other law or laws to the contrary.	
28	Section 18. If any provision of this act or the	1:t
29	application thereof to any person or circumstance is held	3.80
30	invalid, the invalidity shall not affect other provisions or	
31	applications of the act which can be given effect without the	3.81

1	invalid provision or application, and to this end the	
2	provisions of this act are declared severable.	3.82
3	Section 2. This act shall take effect upon becoming a	1:t
4	law.	
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