

CHAPTER 67-1754 (1967)
House Bill No. 1669

AN ACT relating to New Smyrna Beach, Volusia county; amending city charter, chapter 22408, Laws of Florida, 1943, to create a utilities commission and prescribe its authority; repealing chapter 61-2587, Laws of Florida, relating to a utilities commission; providing for a referendum; providing for an effective date.

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

Section 1. There is hereby created and made a part of the government of the city of New Smyrna Beach a utilities commission to be known and designated as "Utilities Commission, City of New Smyrna Beach, Florida," which shall consist of five (5) members. For the purposes of this act, unless otherwise designated, the word commission shall mean the utilities commission of New Smyrna Beach and the word commissioner shall mean a member of the said utilities commission.

Section 2. The commission shall consist of five (5) members to be appointed by the city commission. One (1) commissioner shall serve until the first Wednesday in September, 1967, one (1) shall serve until the first Wednesday in September 1968, one (1) shall serve until the first Wednesday in September 1969, one (1) shall serve until the first Wednesday in September 1970 and one (1) shall serve until the first Wednesday in September 1971. The city commissioners shall appoint a replacement for any commissioner whose term expires and the replacement shall be appointed for a term of five (5) years. Should a vacancy occur on the utilities commission by virtue of resignation, death or removal, the unexpired term shall be filled as provided above. Any commissioner may be removed from office upon a majority vote of the city commissioners for malfeasance, misfeasance, nonfeasance, conviction of a felony or upon recommendation of a majority of the utility commissioners.

Section 3. Each commissioner shall be a qualified elector and freeholder in New Smyrna Beach, but no employee or elected or appointed officer of the city shall be a commissioner and no commissioner who has served two (2) consecutive terms of five (5) years each shall succeed himself.

Section 4. The commission shall meet at least once each month at the offices of the commission. All meetings of the commission shall be open to the public and minutes shall be kept of all meetings. The commission shall have authority to promulgate rules and regulations for the conduct of its meetings and the operation of its business. At the regular meeting of the commission in September of each year, the commissioners shall elect a chairman, a vice-chairman, a secretary and a treasurer from its membership; however, the office of secretary and treasurer may be combined.

Section 5. The commission shall have the power to appoint and employ engineers, auditors, attorneys and such other personnel as may be necessary for the efficient operation of the city's utilities and the management of its business and affairs.

Section 6. The commission shall have full and exclusive authority over the management, operation and control of all of the city's utilities and shall employ and discharge at their pleasure all employees whose services are performed in any manner in connection with said utilities.

Section 7. The commissioners shall be paid such salary may from time to time be set by the city commission of the city of New Smyrna Beach, but no more than one hundred dollars (\$100.00) each month, and in addition shall be paid necessary expenses incurred in carrying on and conducting the business of the commission subject to the approval of the city commission.

Section 8. The commission shall submit to the city commission a monthly statement showing all sums or amounts received, operating expenses, amount charged to depreciation and extensions, reserve fund and amount appropriated to interest and sinking fund. The fiscal year of the commission shall begin January 1 and end December 31 of each year and the books and records of the commission shall be audited by an independent certified public accountant as of the close of business of each fiscal year.

Section 9. The commission shall have full and exclusive power and authority to prescribe rules, rates and regulations governing the sale and use of electricity, water, gas and sewage collection and treatment wherever such services are furnished by said commission and to change the same at its pleasure, after conducting a public hearing or hearings pertaining to rate changes. The commission is authorized to furnish electricity, power, water, gas and sewage collection and treatment to private individuals and corporations wherever the same may be required and feasible as determined by the commission and for said purpose the commission shall have the right to acquire, construct, maintain, extend, improve and develop electric production and distribution systems, water production and distribution facilities and systems, gas production and distribution systems and sanitary sewer facilities and systems, including the right to construct and maintain electric lines, water and gas mains and sewers in, along and under all public streets and highways and to contract with and receive grants and contributions from the United States or any of its agencies or departments, the state and any municipality, public body, corporation, partnership or individual for such purposes.

Section 10. The commission shall have the exclusive power and authority to bill and collect the prescribed fees or charges for all services and utilities under its control and when collected, the flow of funds shall be; first, the payment of all operating and maintenance expenses of said utilities; second, the funding of all reserves required by revenue certificates issued by the city or said commission for projects under commission control including the debt service payments of all such revenue certificates as same become due; third, the payment to the general fund of the city a sum equal to six per cent (6%) of the gross revenues from utilities under commission control; such payments shall be made monthly. The surplus shall be paid annually to the general fund of the city after reserving an adequate fund for operation and maintenance expenses, capital improvements and line extensions as determined by the commission.

Section 11. The commission is empowered, by its duly constituted authorities, to exercise the right of eminent domain to appropriate property, except state or federal, for the purpose of obtaining, constructing and maintaining electric plants, substations and distribution lines; water or gas mains, reservoirs and pumping stations; sewer lines, pumping stations and disposal or processing plants and to acquire all such lands, waters and lands adjacent to waters which the commission judges may be necessary for the full and complete construction, maintenance and operation of any utility. The title to all property, real or personal, owned or acquired by the commission shall be vested in the city of New Smyrna Beach.

Section 12. The commission shall have the power to shut off and discontinue the supplying of water, electricity or any other utilities or services now or hereafter under the control, management or jurisdiction of the commission to any and all users for violation of any of the rules or regulations pertaining to the sale, distribution or use of such utilities and services and for nonpayment, when due, of the fees, rentals or other charges for utilities and services. Regulations governing the shutting off and discontinuance of any of such utilities and services and the terms and conditions for the restoration of such utilities and services, including interest and charges for shutting off and discontinuance or the restoration of said utilities and services may be adopted by the commission.

Section 13. The commission shall have power and authority to make agreements and covenants with the city of New Smyrna Beach and the holders of any revenue bonds or other obligations issued to finance, in whole or in part, any repairs, extensions or improvements of any utility with respect to the filing and collecting of fees, rentals and other charges for services and utilities. All such agreements and covenants shall constitute and be deemed valid contracts between the commission and the holders of any revenue bonds or other obligations and may be enforced by any holder of such revenue bonds or any other obligations in any court of competent jurisdiction subject, however, to any provisions for enforcement which may be contained in such agreements or covenants or in the resolution or resolutions of the governing body of the city or the commission pursuant to which such obligations were issued.

Section 14. The commission, upon a majority vote, is hereby authorized to borrow at any time an amount of money equal to ten per cent (10%) of the book value of the electric and water plants for any six (6) month period and to pay interest on such sum borrowed at a rate not to exceed the then

prevailing interest rate and to issue its promissory note or notes as evidence of said indebtedness which notes shall be signed by the chairman of the commission and the secretary thereof, provided that at no time shall such promissory note or notes exceed ten per cent (10%) of the book value of such plants and provided further that money so borrowed shall be expended only for current operating expenses.

Section 15. The commission shall, after conducting a public hearing or hearings, have the right, power and authority to issue revenue certificates or promissory notes for the purpose of paying all or a part of the costs of acquisition, construction, repairing, extensions, additions, equipping and the reconstruction of any of the city's utilities. All of such revenue certificates or promissory notes while authorized and issued by the commission shall be obligations of the city of New Smyrna Beach and no referendum or freeholder election shall be required as a condition precedent to the issuance of such revenue certificates or promissory notes. All revenue certificates shall be offered for sale to not less than three (3) responsible bond brokers and the best bid accepted unless, in the discretion of the commission, a better bid may be obtained by negotiation. In such case the commission shall have the right to reject all bids and sell said certificates upon the best terms offered therefor.

(1) Revenue certificates issued under the provisions of this act shall be payable from the revenues derived from the operation of the city's utilities or services under the supervision, operation and control of the commission and from any other funds legally available therefor.

(2) The commission shall not convey or mortgage any property or facility or any part thereof as security for the payment of revenue certificates.

(3) In the discretion of the commission, each or any issue of such revenue certificates may be secured by a trust agreement by and between the commission and a corporate trustee which may be any trust company or bank having the powers of a trust company within or outside of the state. Such trust agreement may pledge or assign the revenues to be received by the commission. The resolution providing for the issuance of revenue certificates or such trust agreement may contain such provisions for protecting and enforcing the rights and remedies of the certificate holders as may be reasonable, proper and not in violation of law, including covenants setting forth the duties of the commission in relation to the acquisition, construction, improvements, maintenance, operation, repair, equipping and insurance of the facilities, and the custody, safeguarding and application of all moneys. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or to pledge such securities as may be required by the commission. Such resolution or such trust agreement may restrict the individual right of action by certificate holders as is customary in trust agreements securing bonds or debentures of corporations. In addition to the foregoing, such resolution or trust agreement may contain such other provisions as the commission may deem reasonable and proper for the security of certificate holders. Except as this chapter otherwise provides, the commission may provide, by resolution or by trust agreement, for the payment of the proceeds of the sale of the revenue certificates and the revenues of the utilities and services to such officer, board or depository as it may determine for the custody thereof and for the method of disbursement thereof with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust agreement may be treated as a part of the cost of operation of the utilities affected by such trust agreement.

(4) The resolution or trust agreement providing for the issuance of the revenue certificates may also contain such limitations upon the issuance of additional revenue certificates as the commission may deem proper and such additional certificates shall be issued under such restrictions or limitations as may be prescribed by the resolution or trust agreement.

Section 16. The commission is authorized to provide by resolution for the issuance of refunding

revenue certificates for the purpose of refunding any revenue certificates heretofore issued by the city of New Smyrna Beach then outstanding or issued under the provisions of this chapter. The commission is further authorized to provide by resolution for the issuance of revenue certificates for the combined purpose of:

- (1) Paying the cost of any acquisition, construction, extension, addition, improving, equipping or reconstruction of a facility or facilities of the commission;
- (2) Refunding revenue certificates heretofore issued by the city of New Smyrna Beach and of the commission which shall theretofore have been issued under the provisions of this chapter and shall then be outstanding.

The issuance of such obligations, the maturities and other details thereof, the rights and remedies of the holders thereof, the rights, powers, privileges, duties and obligations of the commission with respect to the same shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

Section 17. Any revenue certificates or other obligations issued pursuant to this chapter shall be and constitute legal investments for bonds, savings banks, trustees, executors, administrators and all other fiduciaries for all state, municipal and public funds and shall also be and constitute securities eligible for deposit as security for all state, municipal or other public funds notwithstanding the provisions of any other law or laws to the contrary.

Section 18. Chapter 61-2537, Laws of Florida, Special Acts of 1961, is hereby repealed.

Section 19. If any section, clause or provision of this chapter shall be held unconstitutional or ineffective in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective, and no other section, clause or provision shall, on account thereof, be deemed invalid or ineffective.

Section 20. All laws or parts of laws in conflict herewith are repealed.

Section 21. Before this act shall become operative, a referendum shall be held in the manner of holding elections as now authorized in the city of New Smyrna Beach and the question to be voted upon is as follows:

"Shall the Charter of the City of New Smyrna Beach, Florida, be changed by repealing Chapter 61-2537, Laws of Florida, Special Acts of 1961, and creating a Utilities Commission and providing for appointment of members of said commission, prescribing the powers and duties thereof, providing for eminent domain, power to borrow money and issue revenue bonds? Yes or No."

and said act shall not become operative unless a majority of qualified voters voting on said question shall vote "Yes" and the determination of the results of said election by the city commission of the city of New Smyrna Beach shall be conclusive and the city commission shall call such election prior to December 1, 1967.

Section 22. This act shall take effect immediately upon becoming a law.

Became a law without the Governor's approval.

Filed in Office Secretary of State June 19, 1967.