

WORKSHOP
APALACHICOLA CITY COMMISSION
TUESDAY, OCTOBER 28, 2025 – 4:00PM
COMMISSION MEETING ROOM
74 6TH STREET, APALACHICOLA, FLORIDA 32320

AGENDA

You are welcome to comment on any matter under consideration by the Apalachicola City Commission when recognized to do so by the Mayor. Once recognized please rise to the podium, state your name for the record and adhere to the five-minute time limit for public comment. Comments may also be sent by email to the City Manager or to Commissioners.

- I. Call to Order**
- II. Agenda Adoption**
- III. Public Comment**
- IV. DISCUSSION: Local Bill Utility System - Options**

Adjournment

Any person who desires to appeal any decision at this meeting will need a record of the proceeding and for this purpose, may need to ensure that a verbatim record of the proceeding is made which includes testimony and evidence upon which the appeal is based. Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office 48 hours in advance of the meeting.

MEMORANDUM

TO: City Commission
Manager Anderson

FROM: Daniel W. Hartman, City Attorney

DATE: October 21, 2025

SUBJ: Local Bill Utility System; Options

The purpose of this Memorandum is to provide legal analysis and recommendations as to legal and practical options facing the City with respect to its water and sewer utility system.

At the Franklin County Legislative delegation meeting held on August 21, 2025 Rep. Shoaf and Sen. Simon voted to proceed with a local bill to expand the territory of the Eastpoint Water and Sewer District. A stated purpose of this expansion is to divest the City of Apalachicola of ownership of its Water and Sewer system. The Eastpoint Water & Sewer District (District) is an Independent Special Taxing District created by the Florida Legislature, Laws of Florida, Acts of 1967 Chapter 67-1399. The governing body of the District is appointed by the Governor.

The legislative aid for Rep. Shoaf advised on October 7, 2025 that no bill language has yet been drafted. Nonetheless it remains the intent of the local legislative delegation to proceed with the local bill as discussed in August 2025. Specifically, the proposed bill envisions expanding the geographic boundaries (service territory) of the District to include the current St. George Island (SGI) and the City of Apalachicola service territories. The District has recently held meetings to discuss the purchase of the SGI (Water Management Services, Inc.) system. Personnel from the District have visited with City staff to inquire about operations and billing. No discussions have been conducted directly with the City Commission regarding the acquisition or other arrangement concerning the City utility system.

It is unclear without draft Bill language to review exactly what legal mechanism is proposed to accomplish the acquisition of the City system. This Memorandum will provide information so that the Commission can weigh options and discuss the pros and cons of the available approaches to utility ownership and management which are in the best interest of the City, its citizens and utility customers.

What is a Local Bill?

The Florida Constitution recognizes two basic types of laws: general law and special law. Various court decisions over the years have explained the difference between these two types. A general law applies universally throughout the state, uniformly on specific subjects throughout the state, uniformly within a permissible classification, or relates to a state function or entity. Special laws apply to specific persons, things or within classifications which would be impermissible or illegal for a general law.

Many of Florida's more than 1,700 special districts such as the Eastpoint Water and Sewer District, were created by the Florida Legislature through a special law. Sometimes known as "special acts" or "charters," these special laws are the governing documents for a special district, including such things as the boundaries of the district, its specific powers and governing board structure. As times change, special districts often desire to amend their charters to better serve their residents. To accomplish a charter amendment, a special district must seek a local bill, which, if passed by the Legislature and not vetoed by the Governor, becomes a special law. This appears to be what is proposed in the instant case.

The local bill process in Florida is much different from the general bill process. The Rules of the Florida House of Representatives require that before a local bill can be filed as a House bill, it must be heard and approved by the local county legislative delegation at a public hearing in the county.¹ The delegation is comprised of all senators and representatives who represent any portion of the county. Each legislative delegation is permitted to have its own rules governing local bills and the rules vary from county to county.

¹ At the Legislative Delegation meeting held on August 21, 2025 in Franklin County the local delegation held an impromptu vote to expand the Eastpoint Water and Sewer District. The Vote was unanimous (2-0).

A request for a local bill may be submitted by any person or entity, such as a special district, to the delegation or to a member of the delegation. A local bill requires only a House sponsor unless it affects more than two counties, in which case it will also require a Senate sponsor. The instant local bill would only appear to affect Franklin County (one county) is being submitted by Rep. Shoaf. It is the responsibility of the entity seeking a local bill to draft the substance of the bill.² The House Bill Drafting Service will review all bill drafts for technical errors and to ensure the bills comply with the Florida Constitution, Florida Statutes and House Rules. Proposed local bills can die at the delegation level where they do not enjoy the majority support of the delegation members. The proposed local bill appears to enjoy the support of both delegation members.

A ballot referendum may be required of a local bill if certain subject matter areas are addressed, such as creating or revising ad valorem taxing power. The District does appear to enjoy ad valorem taxing power. It is unclear exactly how they propose to revise this taxing power to apply within the City service territory.

Once a local bill is filed, it will receive a bill number (i.e. House Bill 101) and its committee references. A local bill must pass favorably through all of its committee references in order for the full House to vote on it. Typically, the first committee reference a local bill receives is the House Local Administration and Veterans Affairs Subcommittee. Prior to the bill being considered by the first committee/subcommittee of reference, the delegation chair must submit a Local Bill Certification Form attesting that the bill was approved by the delegation, among other attestations. An Economic Impact Statement must also be submitted, which describes the projected changes in revenues, costs, funding sources and overall economic effects of the bill. This form must be prepared by a local official, such as a special district's chief executive officer or chief financial officer. The first committee/subcommittee of reference is required to confirm that the required notice was published, a referendum (if required) is included in the bill and the required forms have been filed.

Local bills can be amended during the committee process. After a local bill has passed favorably through all of its committees of reference it proceeds to the House calendar, where it is

² It is not clear what entity is seeking the local bill in this case. Due to the subject matter of the proposed local Bill the logical entity would be the District.

available to be considered by the full House. Unless a local bill contains an exception to general law, a constitutional issue or has a pending floor amendment, it is placed on the expedited local bill calendar. Voting on the local bill calendar is accomplished by a single roll call vote after each bill is read by title by the House Clerk. Any House member wishing to vote “no” on a local bill, must file a form with the Clerk. A bill can be removed from the local bill calendar by five House members providing notice during consideration of the bill by raising their hands or delivering written notice to the Rules Chair prior to consideration of the bill.

All local bills passed by the House are then sent to the Senate for consideration. The Senate considers the local bill calendar in a single vote but separately considers the bills passed by the House that were not on the local bill calendar (i.e. containing an exception to general law). An important Senate rule to consider here is that any senator from the delegation may object to consideration of a local bill. In this case, the bill is removed from consideration and requires a two-thirds vote of the Senate to waive the rules, effectively killing the bill.

When a local bill has passed both the House and Senate, it is sent to the Governor for approval. Assuming the bill is sent to the Governor after session ends, the Governor has 15 days to either sign the bill into law, veto the bill or allow it to become law without the Governor’s signature. The local bill takes effect on the date specified in the text of the bill.

The Decision

The City is faced with a difficult and potentially far reaching decision. The City must decide whether to retain ownership of the system or sell the system to a third party. Over the past five (5) years the City favorably resolved longstanding water quality issues (including THMs), state enforcement matters and financial issues facing the City utility system. Nonetheless, the system as a whole suffered from 30+ years of inadequate investment and attention to maintenance and repair exacerbated by storm damage. The recent water quality emergency and resulting dissatisfaction of customers brought to light the long standing operation and maintenance challenges faced by the City.

Regulatory agencies and the local legislative delegation appear to want the City to demonstrate that it recognizes the problems and is taking meaningful steps to address them. The

state regulatory agencies have long expressed a preference for regionalization of utility service along the Coast. Such regionalization has a number of benefits which include redundancy in the event of storm events, reliability, interconnectivity, financing advantages, purchasing power, etc.

If the City elects to retain ownership of the utility system it should consider a change in management of the utility operation. Specifically, professional management of the City's water and sewer operations, maintenance, repair, and improvements by dedicated professionals experienced in this field.

If the City elects to sell the utility system it should evaluate the terms offered by prospective buyers. Specifically, which buyer will provide the best service to residents/customers of the system and maximize the return to those customers who paid for the system through the terms of any sale.

A threshold consideration is the policy behind provision of central water and sewer service to the public. The purpose of incorporating as a City is most often based on the need for the provision of basic public services including fire protection, police, water, sewer and stormwater among others. To abdicate any of these roles on a permanent basis undermines the basis for incorporating in the first place.

Contract Management

The City has a number of options regarding contracting for the professional management of the Utility System. These options (in no particular order) include:

1. Hire a City Utility Director to provide professional management of the system and retain the system under City ownership and management.
2. Contract Management of the System with private entity or another provider.
3. By Interlocal Agreement, Purchase and Sale and Governmental Utility Authority per Chapter 163. This would typically allow for various levels of retained ownership and/or control over the utility system as set forth in the Interlocal Agreement.

The first option is self-explanatory. The City would need to budget for and conduct a search and hiring process for a dedicated Utility Director position. The role of a City water and sewer, Utility Director would involve overseeing the management and operation of the City water and sewer system. This would include planning, directing, supervising, and managing all activities related to water and sewer services. The Director would be responsible for ensuring the delivery of high-quality services, maintaining and if necessary diversifying sustainable water resources, treating water, treating and disposing of wastewater, and maintaining the necessary infrastructure. The Director would also interact with regulatory agencies, manage complex systems, and build key stakeholder relationships. The Director would need to possess exceptional communication, staff management, and technical skills to effectively manage the utility operations and ensure compliance with local, state and federal regulations and applicable best practices. A salary range for such an employee in the industry is the \$150,000.00 range.

The second option would be to contract with a private company or other organization which specializes in management of utilities. This would involve turning over operations and maintenance of the system to a qualified third party for a fee. The fee would have to be negotiated based on the level of service agreed upon and then built into the utility rates charged to customers. This contract management can be accomplished by private companies dedicated to providing such management services in our area such as U.S. Water Services Corporation. It can also potentially be provided by contract with not-for-profit entities such as Talquin Water and Wastewater Inc. Basically the City should inquire with other private or not-for-profit providers in the area regarding their interest and availability to provide contract management services. It should be noted that such an arrangement would typically still require City oversight and management. Specifically, quality control on the contract manager.

The third option is to enter into an Interlocal Agreement pursuant to Ch. 163, F.S. with another local government(s), special district or a Governmental Utility Authority which would provide for management of the utility system. Such an agreement would be the product of negotiation between the parties and set forth in detail the duties and responsibilities of each party. Such agreements are typical regarding the provision of public services and financial

arrangement between local governments (including special districts). Potential entities which the City could reach out to in this context include Eastpoint District, City Carrabelle, City of Port St. Joe, Franklin, Gulf County, the Florida Governmental Utility Authority and the North Florida Water Utilities Authority. The terms of any such arrangement would be negotiated and the City's level of control and ownership would be an element of the negotiation.

Practical Considerations when making the Decision

Initial considerations include:

1. Condition of the System and technical challenges regarding improvements and repairs;
2. Current and Future Staffing considerations;
3. General Fund Budget considerations – (how much and often does the General Fund subsidize the Utility enterprise fund);
4. Loss of control over utility operations – which would include development activity within service territory (Density and Intensity of Development), accountability to residents, the City would become a customer of the utility;
5. Financial
 - o What is the current equity in the system (see Audit)?
 - o What is the value of capital improvements, land and leases owned by the City?
 - o Does the City plan to expand its service territory in the future and for what purpose – annexation, economic development, other?
 - o What are current and anticipated future operating expenses?
 - o How would the Capital improvement program be implemented?
6. Loss of control over rates, fees and charges decision making on behalf of residents
7. What is the system worth? and what would a buyer pay for the system?

Legal Considerations When Making the Decision

The unwritten but proposed terms of the local bill appear to involve a unique and audacious proposition. Specifically, expansion of an Independent Special District such that it encompasses a municipality specifically so that the District can take over the City utility system.

As discussed previously the most analogous situation I have found so far is the process set forth in section 171.093, F.S. This section describes a process by which services, facilities, assets and liabilities are handled when a City expands to annex property within a special utility district. The proposal from the local delegation is the reverse. The City annexation of property within a Special District involves an Interlocal Agreement and potential Circuit Court action. In the absence of statutory authority for such a unique process other more robust legal principles are in play.

The language in the existing District Charter or new local bill amending the Charter is key. If the local bill does not expressly authorize the use of eminent domain by the District then it would not be able to simply "take over" the City system. Even if the local bill contained such language it would be subject to challenge constitutionally on a number of bases as well as under the common law "prior public use doctrine." In essence the use of eminent domain to take facilities already serving the public in order to serve the public in the same manner is discouraged.

Any taking that survived the initial challenge to public purpose then confronts the question of due compensation. Any legislative action to take a city's water and sewer system without compensation would be unconstitutional under Florida law.

The legal standards for establishing necessity³ when seeking to take a municipal system through eminent domain in Florida would require the condemning authority to demonstrate a "reasonable necessity" for the taking. This standard does not require absolute necessity but rather a reasonable necessity for the public purpose in question. The burden of proof initially lies with the condemning authority to establish this necessity. Once reasonable necessity is shown, the owner may challenge the taking by demonstrating bad faith, gross abuse of discretion, or illegality. Under Florida law, the condemning authority bears the initial burden of demonstrating a reasonable necessity for the taking, which includes showing that the property is necessary for a public purpose. If this burden is not met, the petition for eminent domain fails, and the municipality does not need to present affirmative defenses

³ This is tied to public purpose. i.e. is the taking necessary to serve the public purpose behind the condemnation.

Courts have held that the exercise of eminent domain power is subject to judicial review to ensure compliance with due process and statutory requirements. If the condemning authority's actions are found to be arbitrary, capricious, or beyond the scope of its lawful authority, the taking can be invalidated.

Recommendations:

1. Select an initial path forward and direct staff to develop detailed information.
2. My recommendation as to this initial path is contract management, if the Commission elects to pursue this path then -
 - a. Direct staff to obtain additional information/proposals (if interested) from both Utility Authorities, U.S. Water Services, Eastpoint and Talquin.
 - b. Summarize and Rank the proposals received and schedule another meeting to discuss the particulars.