



# City of Santa Fe, New Mexico

## LEGISLATIVE SUMMARY

Bill No. 2015-23

### Enterprise Fund Transfer Adjustment

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**SPONSOR(S):** Councilor Ives

**SUMMARY:** The proposed bill amends Section 11-12.1 SFCC 1987 by modifying the formula by which the Governing Body may authorize funds for transfer from an enterprise fund to the general fund.

**PREPARED BY:** Rebecca Seligman, Legislative Liaison Assistant

**FISCAL IMPACT:** Yes

**DATE:** July 2, 2015

**ATTACHMENTS:** Substitute Bill (incorporates Councilor Ives' and staff amendments)  
FIR

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2015-23

INTRODUCED BY:

Councilor Peter Ives

AN ORDINANCE

AMENDING SECTION 11-12.1 SFCC 1987 TO MODIFY THE FORMULA BY WHICH THE GOVERNING BODY MAY AUTHORIZE FUNDS FOR TRANSFER FROM AN ENTERPRISE FUND TO THE GENERAL FUND.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Section 11-12.1 of the Santa Fe City Code 1987 (being Ord. #1997-4, §1; Ord. #2011-14, §1) is amended to read:

**11-12.1 Enterprise Fund Expenditures.**

A. All revenues generated by enterprise funds, including bond and grant proceeds, shall be expended solely for the purposes of their respective enterprise funds.

B. All revenues in excess of that needed to pay for operations and maintenance, capital outlays, bond debt service and similar revenue expenditures shall remain within their respective funds unless a failure to transfer the funds would constitute a violation of law or an impairment of an existing contract, or is made in accordance with paragraph D of this section.

C. [~~Cash balances~~] Net revenue generated by enterprise funds shall be [~~retained within~~

1 ~~their respective funds, except that on annual basis]~~ used for capital investment, repair and  
2 replacement, debt management, working capital, and transfers to the general fund.

3 D. On an annual basis, the governing body may authorize a transfer to the general fund  
4 in an amount not to exceed [one million seven hundred thousand dollars (\$1,700,000)] twelve percent  
5 (12%) of the three (3) year average total operating revenues based on the previous two years' actual  
6 revenues reported in the city's annual audit, after allowing the enterprise to meet all of its operating  
7 expenses and debt service obligations, and providing for 45 days of working capital. Prior to such  
8 transfer of enterprise funds to the general fund, an analysis shall be performed to ensure that such a  
9 transfer would not require an enterprise fund rate increase; negatively affect bond ratings associated  
10 with the specific enterprise fund or be inconsistent with NMSA 1978, § 3-23.4. The city may ~~also~~  
11 charge the enterprise fund for duly incurred non-routine costs of city services attributable to operation  
12 and maintenance of the enterprise or enterprise fund.

13 E. The city may charge the enterprise fund the reasonable value of costs of city services  
14 attributable to operation and maintenance of the enterprise or enterprise fund.

15 ~~[D]~~F. This ordinance is not intended to be construed to affect, amend or repeal any  
16 provision of any bond ordinance and is not intended to pertain to the collection of payments in lieu of  
17 taxes/fees or the convention center enterprise fund.

18 G. Paragraph D of this section shall expire on June 30, 2016. Paragraph E shall take  
19 effect July 1, 2016.

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21 APPROVED AS TO FORM:

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KELLEY A. BRENNAN, CITY ATTORNEY

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M/Legislation/Bills 2015/2015-23 Enterprise Fund Transfer Adjustment

### City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

**Section A. General Information**

(Check) Bill:  X  Resolution: \_\_\_\_\_

(A single FIR may be used for related bills and/or resolutions)

Short Title(s): **AMENDING SECTION 11-12.1 SFCC 1987 BY MODIFYING THE FORMULA BY WHICH THE GOVERNING BODY MAY AUTHORIZE FUNDS FOR TRANSFER FROM AN ENTERPRISE FUND TO THE GENERAL FUND.**

Sponsor(s): Councilor Peter Ives

Reviewing Department(s): Legislative Services

Persons Completing FIR: Jesse Guillen Date: 5/22/15 Phone: 505-955-6518

Reviewed by City Attorney: *Kelly A. Brennan* Date: 6/5/15  
(Signature)

Reviewed by Finance Director: *[Signature]* Date: 6-4-2015  
(Signature)

**Section B. Summary**

Briefly explain the purpose and major provisions of the bill/resolution:

**This bill amends Section 11-12.1 SFCC 1987 by altering the formula that allows for the governing body to transfer funds from an enterprise fund to a general fund. The current limit is \$1.7 million per year, the amendment would change it to a maximum of twelve percent (12%) of the cash availability. The calculation will be based on the availability of funds after the requirements of subsection B (operations, maintenance, capital outlay, bond debt service) are met.**

**Section C. Fiscal Impact**

**Note:** Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)\*

**1. Projected Expenditures:**

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs  
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs  
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: *[Signature]*

\_\_\_\_\_ Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
Expenditure Classification	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs -- Recurring or "NR" Non-recurring	Fund Affected	
Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____	
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____	
Capital Outlay	\$ _____	_____	_____	\$ _____	_____	_____	_____	
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____	
Professional Services	\$ _____	_____	_____	\$ _____	_____	_____	_____	
All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____	
Total:	\$ _____			\$ _____				

\* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. \*\*For fringe benefits contact the Finance Dept.

**2. Revenue Sources:**

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
Type of Revenue	FY 2015-16	"R" Costs Recurring or "NR" Non-recurring	FY 2015-16	"R" Costs -- Recurring or "NR" Non-recurring	Fund Affected	
Operating	\$3,000,000	_____	\$3,000,000	_____	_____	
_____	\$ _____	_____	\$ _____	_____	_____	
_____	\$ _____	_____	\$ _____	_____	_____	
Total:	\$3,000,000		\$ 3,000,000			

**3. Expenditure/Revenue Narrative:**

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

**The proposed legislation would have a significant positive financial impact. It will raise the current limit that can be transferred to the General Fund from the utilities from \$1.7 million to 12% of gross receipts. Next fiscal year, this will amount to \$4.7 million. The actual amount transferred would occur only after the affected utility has covered all operating costs and debt service obligations and generated 45 days of working capital (net revenues). Current revenue and expenditure projections for the water utility next year indicate that it will be able to sustain the 12% payment.**

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**Section D.      General Narrative**

**1. Conflicts:** Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

**No.**

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**2. Consequences of Not Enacting This Bill/Resolution:**

Are there consequences of not enacting this bill/resolution? If so, describe.

**If the transfer limit is not raised to 12% of gross receipts, next year's budget will come in short by \$3 million. The city will only be able to transfer \$800,000 above the estimated \$0.9 million that is already transferring by way of non-utility costs in the General Fund paid directly by the utility. This will also widen the city's total operating deficit, which already stands at \$11 million.**

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**3. Technical Issues:**

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

**None.**

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**4. Community Impact:**

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

**This legislation would allow the Governing Body to transfer excess operating revenues from the enterprise funds, specifically in the Water Division, and appropriate them as needed. The legislation includes a provision that the enterprise fund keep a prudent balance in the fund as required by other subsections of the Code, as well as other applicable, existing law. If the legislation is not passed, the Governing Body will have to amend the budget to either cut services or lay off staff by an amount equal to \$3 million or raise taxes by this amount, all of which may have a negative impact on the community.**

**ACTION SHEET**  
**PUBLIC UTILITES COMMITTEE MEETING OF 6/3/15**

**ISSUE NO. 19**

Request for approval of Bill No. 2015-\_\_\_\_\_. An ordinance amending Section 11-12.1 SFCC 1987 by modifying the formula by which the Governing Body may authorize funds for transfer from an enterprise fund to the general fund. (Councilor Ives) (Oscar Rodriguez)

Public Utilities Committee – 6/3/15  
 City Council (Request to Publish) – 6/10/15  
 Finance Committee – 6/15/15  
 City Council (Public Hearing) – 7/8/15

**PUBLIC UTILITES COMMITTEE ACTION: Not approved.**

**SPECIAL CONDITIONS OR AMENDMENTS:**

**STAFF FOLLOW UP:**

<b>VOTE:</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
COUNCILOR RIVERA, CHAIR	X		
COUNCILOR MAESTAS		X	
COUNCILOR BUSHEE		X	
COUNCILOR DIMAS		X	
COUNCILOR IVES	X		

~~VOTE: The motion was approved on a voice vote, with Councilor Ives, Bushee and Maestas voting in favor of the motion, no one voting against, and Councilor Dimas abstaining.~~

~~Councilor Ives said he has to leave at 5:30 because he is covering a meeting for the Mayor.~~

~~Chair Rivera said then we will hear item 19 next.~~

~~MOTION: Councilor Ives moved, seconded by Councilor Dimas, to hear Item #19 next on the agenda.~~

~~VOTE: The motion was approved unanimously on a voice vote.~~

~~Chair Rivera said he understands there are a number of people here to comment on Item #19, and said they will be allowed to speak at the end of the meeting.~~

### **CONSENT – ACTION CALENDAR DISCUSSION**

- 19. REQUEST FOR APPROVAL OF BILL NO. 2015-\_\_\_\_. AN ORDINANCE AMENDING SECTION 11-12.1 SFCC 1987, BY MODIFYING THE FORMULA BY WHICH THE GOVERNING BODY MAY AUTHORIZE FUNDS FOR TRANSFER FROM AN ENTERPRISE FUND TO THE GENERAL FUND (COUNCILOR IVES). (OSCAR RODRIGUEZ) ) Review: Public Utilities Committee 06/03/15; City Council (Request to Publish) 06/10/15; Finance Committee 06/15/15; and City Council (Public Hearing) 07/08/15**

A copy of an amendment to this bill proposed by City Staff, is incorporated herewith to these minutes as Exhibit "1."

A copy of City of Santa Fe Ordinance No. 1997-4, adopted February 26, 1997, is incorporated herewith to these minutes as Exhibit "2."

Councilor Bushee said, "I need someone to confirm the history in 2011. The amount of \$1.7 million was not coming from surplus funds for the wastewater department. I believe this is premature. I know City Council is counting on this to balance the General Fund, but now that you are making a permanent change, I need history. The Wastewater Division had a project and Councilor Chris Calvert found money for it that had not been used, that was my understanding of where those funds came from. The loan to the Water Division was being paid off over time. It was close to being paid off by the time we were dealing with budgets back in 2011. It seems no one has a clear memory, but I do know we have minutes. It is difficult for me to go against the intention of the law. The City and County put forth an ordinance that required that we not transfer funds from the enterprise fund. It is wrong to say it is a repayment from the Water Division. It was to use up funds not used in the proper way to begin with."

Councilor Bushee continued, "I am also introducing an Ordinance this evening to repeal the previous ordinance. The concern I have is that there has to be some kind of parameters set on the City if

we are going to run a municipality and an enterprise. This is just to balance the General Fund until forever. It has been proposed by our Finance Director who I do not see here tonight. If it is a franchise fee let it reflect the 2% PNM pays. I do believe the City actually incorporated franchise fees when we purchased the Water Company from PNM. I ask that there be amendments to the effect that the other utilities we have are included and that they are not also being taxed or raided to balance the budget in the future."

Councilor Bushee continued, "This is not a one time deal and it is the wrong approach. I am going to consider asking the attorney general in the future. There has to be a way. The City has to be responsible to rate payers. In 2009 we did not need to raise the rates. Now we have more money sitting around and it is being promised based on the wrong information history. I ask the sponsor to hold off on this until we are able to ask the Attorney General. I will talk to our state representatives as well to see their interest. In 1997 we were clear that we need to keep our enterprise fund separate from the operation of the City. When was the last time we updated our 10 year water plan."

Mr. Schiavo said, "We completed a master plan. It is 5 years old. Every year we update the Water Division's CIP and during the budget session I handed out the 5-year CIP plan."

Councilor Bushee said, "We are not keeping up our every three years requirement. All of the plans including ordinances from 1997 talk about making sure the water company is self sustaining and that it does not effect rates in any negative way. The same is true of the 10-year water plan. One time in 2011 when we had a surplus of funds that was the intent, to use up that money. I am concerned now that we are taking this into a full blown policy approach. I asked the sponsor to hold off to talk to the Attorney General, and until we have the background and history. Why is water the only area we are looking at. We are not doing that for any other utility. If it is a franchise fee let's level it."

Councilor Bushee read the provisions of Ordinance 1997-4 into the record. Please see Exhibit "3," for the text of the Ordinance.

Councilor Bushee asked if we pay for City services attributable to the utility.

Mr. Schiavo said yes.

Chair Rivera said Councilor Bushee has brought up a lot of issues, and he would like to give staff time to respond.

Mr. Schiavo said you asked about the 10-year plan being updated every 3 years. He said we contract with a firm to update the Plan every year, and he can provide a copy of that Plan to her

Councilor Bushee said it is supposed to be voted on by the Council as well.

Mr. Schiavo said it is brought to the Council every year.

Councilor Bushee said the City balanced its budget in 2011 with \$18.9 million that was to be used for a project that was never started and/or completed.

Mr. Schiavo said he spoke with staff and the only project they could think of was the compost facility. He will follow up with them on the \$18.9 million.

Councilor Bushee said, "Councilor Calvert was Chair at the time and that is where the change came in. I thought that was a one time only occurrence but now I don't think so. It is hard to think it was based on pay back. I want to go back to the spirit and intent of the original code provision. I never got your memo Marcos. Maybe you have some history. I have concerns. If this were PNM we would be intervening at the PRC and saying you can't do this to the ratepayers and citizens. There has got to be some parameters. That is why I am going to get with the Attorney General."

Councilor Maestas said, "I agree that this is not ready for prime time. When we brought this up at budget negotiations this was based on the City of Austin. The Finance Director was the Assistant Manager at the City of Austin. He was trying to do something that worked in another city. I am sure they justified the 12% transfer somehow. I said I would approve the concept for payment in lieu of taxes but I think this body needs to go through and identify those costs and not use 12% just because it worked in another city. In my resolution, I asked if the water fund could stand alone without the GRT dedicated to it. In that resolution, it calls for formalizing our transfer policies as best as we can and developing a cost allocation formula. There is no reason why we can't have that for the Water Fund. We need to have that broader discussion."

Councilor Maestas continued, "I am not sure we need an Attorney General's opinion. I think it is too early to demagogue the issue. We need to get to work and take this policy apart. If you look at part D, page 2 of the ordinance, line 8, I think that all needs to be reworked. Part C relates to payment in lieu of taxes. A lot more work needs to be done on this. I would like to see staff inventory these costs. I did see some of the amendments City staff introduced and they are getting there but are not quite there. If you look at part B there is no mention of capital improvements in the 10 year CIP plan. I would like to see more definitive language. I think the Asset Management Plan could really change the way we earmark funds and allocate money. This does not mention the asset management recommendations and set asides. This needs a lot of work. I appreciate the sponsor coming forward to make the budget right but I think it's going to require a lot more work than what is proposed in these amendments and through the Staff amendment."

Councilor Ives said, "First of all I want to correct a misstatement, as to what this measure does. It actually, as it states expressly, 'all revenues generated by enterprise funds,' so it's not specifically related to water, so it is an effort to bring all our enterprise funds under this umbrella so they can be dealt with equitably, because I do agree there is certainly no rationale in my mind to affect water as opposed to other enterprise funds within the City. So just to correct that misstatement that was made as to what the effect and what the language is intended to encompass. I just want to correct the language on that point."

Councilor Ives continued, "If I could ask a question. In the budget this year, did we not pass a budget which did transfer 12% from Water into the General Fund so we could submit a balanced budget to the State."

Mr. Schiavo said, "Yes. When it was done Oscar had calculated \$4.7 million, \$3.8 million to be transferred into the General Fund, included his interpretation of \$900,000 associated with the [inaudible] to be paid out of the Water Division. So 12%. To answer your question, it was included in this year's budget."

Councilor Ives said, "So it seems we apparently have an Ordinance that prohibits us from approving a budget of that sort, because it only allows a transfer of \$1.7 million, and yet the Council has already passed a budget that requires a 12% transfer. So unless the budget approval itself modified this Ordinance in effect, for this particular year which is a possibility, and will probably look to the Council for a sense of that, this is in part meant to try and ensure that we have this capacity in this upcoming fiscal year to move forward with a balanced budget that has been proposed and already passed. And again, it talks about the 12% cap but does not, at any point in time, interfere, require that anything up to 12% actually be utilized in this fashion. So, I have no problem with putting together histories and figuring out what, on an annual basis that number might need to be, if anything, and we don't know the answer to that question in succeeding years, quite frankly, but it would be as low as 1%, it could be ½%. I certainly think it should be across all our enterprise funds."

Councilor Ives continued, "But we're left with this question of having approved a budget which approves a 12% transfer which, ostensibly on its face, conflicts with the existing Ordinance. So, I can't agree to pulling this, because I think it's necessary to move this forward so we didn't get caught in the circumstance of having approved a budget that legally violates our own Ordinances. So, I think we have to move this forward, and the other amendments that staff had submitted. And by all means, let's ask the questions, because we will have a whole year to figure out what we need to do before the next time the issue comes up. But let's get this problem solved at this point in time for this next budget cycle. And again, I think this reasonably creates a framework upon which future action can be taken by imposing it upon all the enterprise funds and allowing a greater maximum, but not requiring any amount, so I would always be subject to Council review and approval during the budget process. Thank you, Mr. Chair."

Councilor Bushee said, "Nick, just to clarify, I understand that it mentions all the utilities, but is there only one utility in the City Manager's [budget] that has a surplus."

Mr. Schiavo said, "I am very reticent to say surplus."

Councilor Bushee said, "Okay, as much money as the Water Company has."

Mr. Schiavo said, "No. To answer your question, no."

Councilor Bushee said, "So, in essence Councilor, and I know it's semantics at this point, but it is still a raid on the Water Fund, as that fund is full of money. As far as demagoguery, Councilor Maestas, I

asked, in fact back when you submitted your Resolution, which initially with the amendment, was to try and undo the 2006 1/4% tax. I asked what State parameters we had when we pass a bond and I asked that of legal counsel. And I further asked Legal counsel to get back to me about the legality of what I anticipated we were about to do with regard to violating the letter of the law of the 1997 Code provision. And Councilor Ives just spoke to that actually. So, what I'm trying to get at here, as far as the AG's office goes, is to really tell us how we should be operating. I can't imagine, and I'll see how well that works to come from a little old City Councilor, but I have to say, it would seem to me that we have to wearing hats, but let them be separate hats, and hang onto separate *[inaudible]* and not to do this. I have seen it to be a shell game."

Councilor Bushee continued, "And I think the public is outraged at this point and I think *[inaudible]* just revise some Resolution. But this is the group of folks that actually voted for the rate increases. And before they did that, they put a Resolution together adopting the Water Division and the Financial Plan that said: *'Whereas the City's water operations are financially self sufficient with funding for capital and operating requirements, derived primarily from water use; and Whereas the main function of the Financial Plan is to balance sources of funds with uses of fund; and whereas sources of funds include revenues from water sales and so we see revenue invested in our cash reserves that precedes the contributions, including grants and developer contributions, etc.; and Whereas by identifying all the planned uses of funds, the Water Division will be able to develop a Financial Plan that balances the source of funds in such a way as to minimize the impact on water rates as much as possible; and Be it further Resolved that the Governing Body shall review the Plan every 3 years,'* which I don't think we've done."

Councilor Bushee continued, "But I have to say I've had folks say to me, it will keep people conserving water. We are some of the best water conservers in the City of Santa Fe. We have the second highest water rates in the nation, after San Diego. We already have conservation measures built in place. We have a multi-tiered rate structure which takes care of that through our water users. I find that we are not creating good policy here tonight. This is not good government. This is not honoring the intended uses of the funds that we raised rates for in 2009 for 4 years straight at 8.2%. It was a split Council back in 2009. Mayor Coss had to break the tie. Councilor Dominguez, Trujillo, myself and Ortiz voted against it because we had \$70 million sitting in reserves. And now we have \$25 million more. It's the wrong policy. I expressed in the budget hearings that we didn't have the tough discussions, and now we are just going down the wrong path."

Councilor Maestas said, "I wanted to focus maybe a little past this section, which is Section D, and I wanted to talk a little bit about the General Fund support transfer that was also part of the budget. Maybe it's for you Nick. Would you agree that Section D on page speaks to the General Fund support transfer from the enterprise to the General Fund. We have two transfers, we have payment in lieu of taxes which is the 12% and then we have kind of a General Fund support transfer and the only part of the legislation I think would make the General Fund support transfer is Section D. Would you agree with that Nick."

Mr. Schiavo said, "Councilor, I do agree."

Councilor Maestas said, "Well my issue then is if you look, the language says there can also be a transfer for extraordinary, duly incurred costs of non-routine City services. I think as we started peeling the onion back, draining the swamp, or whatever you want to say, there were FTEs being paid for to the General Fund. That is not a non-routine service. I think we need a stop gap fix to be in compliance. If we are going to be consistent with the General Fund we need to be clear. I am not sure this description accurately depicts what we are doing. Am I right Nick."

Mr. Schiavo said, "I am hesitant to share my feelings on it."

Councilor Maestas asked, "I think that we do need a stop-gap fix to this legislation, I agree with that, so we can be in compliance, and I agree with that rationale. But if we are going to be consistent with the budget, then I think we should look at the General Fund support and making appropriate changes to this that are consistent with the General Fund transfer that is in the approved budget. And I'm not sure that this description accurately characterizes the nature of the services that we transferred money for in this approved budget. Do you have a response to that Nick. Am I right, am I wrong. Do you think this addresses the other transfer."

Mr. Schiavo said, "Councilor, I'm a little hesitant to share all of my feelings or my opinions on it."

Councilor Maestas asked him to speak to the Legislation, and if it is accurate or consistent with the transfer that was made in this approved policy, and if not, do you have any recommended language, since this could be a stop-gap policy change."

Chair Rivera asked, "Does the Amendment Sheet get rid of the D in the packet and replace it with the D in the amendment."

Mr. Schiavo said, "Yes, it does."

Chair Rivera said he thinks that addresses some of Councilor Maestas's concerns.

Councilor Maestas said, "No. I think this is a general description of the transfers."

Councilor Ives said, "On that point, I believe what the Amendment Sheet does is in lines 4-7 on page 2, beginning with the sentence at the end of the line 4, that says, 'Prior to such transfer.' It eliminates that sentence and creates a new Paragraph D as indicated in the amendment. And then if you look at number 5 on the Amendment Sheet, it says renumber succeeding paragraphs as needed."

Councilor Maestas said, "It is not a replacement, Mr. Chair, it's still in there as is. So I'm concerned even it is a stop-gap. At a bare minimum, I think you need to fix this to accurately characterize the General Fund support transfer that was made in this budget. That's all I have, Mr. Chair."

**MOTION:** Councilor Ives moved, seconded by Chair Rivera for purposes of discussion, to approve this request with the amendments.

**DISCUSSION:** Councilor Bushee said, "I think at a minimum we need the full minutes, and I have a partial set of them from 2011, then showing that they were going to bill them \$4 million. They had gotten [inaudible] down, a lot of swapping back and forth. Some of it would repay from the Water Fund loan, something to the General Fund from the Water Company. Again, this pot of money that got expenses appropriately. And I think you have to understand, it feels like we are going down a slippery slope here, and I really think we should be approving this evening. I think we should postpone it until we have better language, better information as far as the history on money that's in the first place. It's a very rare thing. I guarantee you that if you comb through our Code, you would not find many other provisions that have a specific dollar amount built into it. It's something we have done to expend funds that should have been expended in a different way. At the time, there was a lot of expression of not wanting to set that precedent. And here we are today setting some past policy."

Chair Rivera asked what are the repercussions if the City doesn't produce a balanced budget.

Marcos Martinez, Assistant City Attorney, said, "The City submitted a budget to DFA from the Finance Administration. That budget basically has within it the presumption that this transfer will go through. If the Ordinance is not changed the City will be limited to the existing Ordinance right now, and be limited to the transfer of \$1.7 million, and the budget that was submitted to DFA will not be accurate and we also will not be able to meet the budget."

Chair Rivera asked, "Do you know what the repercussions of that would be."

Mr. Martinez said, "There is a back and forth between the DFA and the Committee at this point, so any capital projects or to make certain recommendations to the City.... as I've said there could be significant repercussions."

Chair Rivera said, "Councilor Bushee, I agree with a lot of what you are saying, and I would support your Ordinance that you are proposing if it came with \$2.9 million worth of cuts that it would take to balance the budget and where those cuts would be. Again, if we're not going to support the \$2.1 million that would come in addition to the \$1.7 million to balance the budget, where are we going to cut."

Councilor Bushee said, "Can I also just clarify something, Mr. Chair. I asked the City Attorney.... I was trying to find out if somebody from the Attorney's Office would catch this and amend your Ordinance sooner. I asked when we approved the budget at the last Council meeting, how are you going to handle this, because we submit a budget, we've got a deadline of July 1 as the fiscal year. But this Ordinance will not be passed until mid-July, end of July, that's how long it takes an ordinance to pass here. And I'm not by-passing your question again. I'm still of the opinion that we do the budget correctly and have those discussions that we put off in this process, but not compound the problem by creating more bad policy for the future. So, we're not on time with this amount of money, \$2.1 million. We will already perhaps be in some bad graces of the DFA, I would presume. Because the answer I got from Kelly Brennan was, well,

we just won't be able to operate that part of the City, I guess, or that part of the budget, until we have this passed. Nowhere does it stop and ask the question, did we always look at the money over there and this will just keep going. So that's been the important part for me, is that I think we abdicated our responsibility as *[inaudible]* and on top of that, we're making the worst decisions to try to correct that."

Chair Rivera said, "And that's what I'm saying, if we are going to correct that where are those cuts going to be made."

Councilor Bushee said, "Let's start meeting again and get on the budget."

Councilor Maestas said, "Just a quick comment, Mr. Chair, regarding the pay back from the enterprise fund to the General Fund, during the budget hearings last year, we were told, if my memory serves me right, that there was still an outstanding payment from the Water Fund to the General Fund, it was a payback of \$5 million. So when I asked a week before we were to begin budget hearings, I was told no it was already paid back. That really concerns me. Because that is a significant amount of money, and I wasn't familiar with the overall payment plan and the progress made to date. And to me that was not a satisfactory answer."

Councilor Maestas continued, "I think part of all of this too is to dredge up all the enabling legislation that created this payback, and I want proof of all the transfers that were made as a part of that pay back. I want to see the transfers that occurred in this fiscal year, and I haven't seen that. So that's very alarming to me, Mr. Chairman. That is why I think there is going to have to be some digging here on our part. It's not going to be fun, but I really think we are going to have to work really hard to bring everyone up to speed with some baseline understand, understand what recently happened, and see if we can't reconcile the past and focus on this proposed policy that was integrated into our current budget. So we're stuck. We're stuck in the past and it's preventing us from looking forward."

Councilor Ives said, "I was just going to call the question."

Chair Rivera called for a roll call vote.

**VOTE:** The motion failed to pass on the following Roll Call vote:

**For:** Councilor Rivera and Councilor Ives.

**Against:** Councilor Bushee, Councilor Dimas and Councilor Maestas.

**Explaining his vote:** Chair Rivera said, "I'm going to vote yes, with the promise that we'll look at those cuts hopefully before this gets through the entire process."

**Explaining his vote:** Councilor Ives said, "Yes, and I agree wholeheartedly."

**Explaining his vote:** Councilor Dimas said, "I have to agree with Councilor Bushee, and I don't think we should be raiding the Water enterprise fund in any way, shape or form. And I vote no."

**Explaining his vote:** Councilor Maestas said, "I'll vote no, but I would like to see the general support to General Fund transfer fully addressed. I could accept this as stop-gap legislation later on down the line if we could find satisfactory language, with the proviso that we don't wait a whole year to talk about this in this budget. So, my vote is no."

*Councilor Ives departed the meeting*

Councilor Bushee said, "Just direction to staff to go back and find the whole history of what we did in 2011, as far as where those monies came from, and where they went to. And I believe, Councilor Maestas, unfortunately, we have an architect of what happened in the past who's not here, former City Manager Robert Romero, and unfortunately about what happened to our Park Bond. But I will say, it was very difficult for the Council at the time. Right before one of our budget cycles, our Finance Director was either fired or quit. I don't believe there is a formal policy that created the loan from the General Fund to the Water Company. It can't be as much money as we're expressing here in this Ordinance, because it was, I think, \$10 million if I'm not mistaken, and I think it was used over the last few budget cycles. And I would like some opinions from our City Attorney's Office, and particularly from the guy that we pay out of the Water Fund, what about State law when it comes to the bond holders that we're just allowed to do this kind of thing."

Mr. Martinez said, "State law is very permissive as long as it is covering the money *[inaudible]*. It potentially imposes no additional requirements and does allow the City to transfer money from the utility funds to the General Fund. There have been cases that have gone to the Supreme Court on that."

Councilor Bushee said, "I would just ask then if you would be willing to ask the Attorney General's Office if there is anything that can be done to watch over the ratepayers fund."

Mr. Martinez said, "State law recognizes the distinction between utility functions and governmental functions. *The balance of Mr. Martinez's remarks are inaudible.*"

Councilor Bushee said when it came to the Parks Bond it was a third of the amount of money we are dealing with here.

### **Public Comment**

Chair Rivera said he will allow 2 minutes for each person to comment.

Caroline Sigstedt, 701 Alto Street, said, "I am so glad I came here this evening. And what you just discussed was very difficult but I think your vote is correct, there is no question in my mind. I have been interested in this because it is a great deal of money, and because I represent no special interest and I care about water, and I care about how *[inaudible]*. If we ever needed something down the road, water is

only going to get more expensive, and if we needed at that time to raise the rates, that we would have the public trust to do that. I thought, Councilor Maestas, your comments about if we do transfer this money, exactly where does that money go. As a water company ratepayer, if our water money is not going to water and for water uses, we certainly have the right to know where it being used, dollar by dollar, and that \$4.8 million. That is a huge amount of money. So that was good on your part. I also thought Patti history was very good as well. The original intent was to have a secure water company, that it's wonderful that we own the water company. And I thought Patti's point about renewing the financials as well as well as the technological, hydrological assets of the water company is important to do every 3 years. My daughter is a hydrologist up in Boulder, and she works with the Boulder Water Department and does hydrological work for them. Cutting edge what they do. And I have their master plan that I want to give our director. Insidentally, our director, for the record said that he opposed no money back. And I got a different story from our Financial Director. I spent the time to make appointments, and then got different answers, and that was kind of frightening to me."

Chair Rivera asked her to wrap up her remarks because she has exceeded her 2 minutes.

Ms. Sigstedt said, "I just want to thank you for voting the way you did, and I believe that water in the future, you will need the public behind you and you better keep with that."

#### **Public Comment was Closed**

Chair Rivera said although this failed in this Committee, it may go on and pass other committees to make it to the full Council.

Ms. Sigstedt said she is aware of that, but just because there is a pressure to have a balanced budget.... you don't correct the problem using the same methods that created the problem.

Chair Rivera said he was just giving her information and thanked her for her comments.

#### **INFORMATIONAL ITEMS**

##### **6. UPDATE ON CURRENT WATER SUPPLY STATUS AND McCLURE RESERVOIR CONSTRUCTION. (ALEX PUGLISI AND ROBERT JORGENSEN)**

Mr. Puglisi handed out an updated drought monitor, a copy of which is incorporated herewith to these minutes as Exhibit "3". Mr. Puglisi reviewed the information in the packet and in Exhibit "3."

Mr. Puglisi said we have had 3 significant rain events and that has kept the watershed and the River running, and we have had peak flows we haven't seen in 8-10 years. He said we have been able to keep Nichols Reservoir full with a peak storage capacity of 92%. He said we peaked the night of May 22<sup>nd</sup> into the morning of the 23<sup>rd</sup> and we are receiving about 27 million gallons a day into the reservoir. He said there is an update to the report of May 23, 2015, and reviewed those figures.

Mr. Pfeifer said he did on-line research and went through municipalities and they go by head count in a building. So in a very active location like City Hall or a rest stop, you would see those kinds of savings where there is almost continuous use. He said at his office on Siringo where there are just a few people, you wouldn't see those kinds of savings. He tried to find a happy medium based on his research.

Mayor Pro-Tem Ives asked if there is any sense of what a conversion would entail.

Mr. Pfeifer said the City has a \$500 rebate for the waterless urinals which would pay for the urinal. The cartridges that go in it cost about \$30 each, but if we bought in larger quantity we would get better pricing. So the money we would save in water we would be spending in equal or better amount on cartridges.

Councilor Pro-Tem Ives would like him to run those numbers so we can understand the cost benefit more clearly from the conversion. He thinks the City should lead in saving water. He said the that the rebate is equal to the cost of the urinal is good information. He didn't see pricing on the water savings, and he would be interested in that information in considering replacement across the City.

Mr. Pfeifer said he didn't calculate that, because there are such varying costs once you hit the one limit, it costs this much, and when you hit the next. He is sure most of the billings hit that some point, so he doesn't have a good way of figuring that out, commenting that's a tough calculation. He might be able to do it with help from past water bills and such. He said quick math, if you have 100 urinals at \$30 month to change the cartridge, that is \$3,000 per month we would spend on cartridges, commenting he is sure we don't spend that much on water.

Mayor Pro-Tem Ives said if he could attempt that calculation he would be interested if he took a facility such as City Hall, for example.

Mr. Pfeifer said he can do that.

Councilor River asked if we were to ask him to replace everything listed in his Memo, does he have the funding in his own budget, or is this new money we have to find.

Mr. Pfeifer said he does not have the money to replace them, but he could replace them if they break one at a time from CIP funds over a two year cycle.

**13. REQUEST TO PUBLISH NOTICE OF PUBLIC HEARING FOR JULY 8, 2015:**

- a) **BILL NO 2015-23: AN ORDINANCE AMENDING SECTION 1-12.1 SFCC 1987, TO MODIFY THE FORMULA BY WHICH THE GOVERNING BODY MAY AUTHORIZE FUNDS FOR TRANSFER FROM AN ENTERPRISE FUND TO THE GENERAL FUND (COUNCILOR IVES). (OSCAR RODRIGUEZ)**

Mr. Rodriguez said this is a request to advertise so you can discuss and consider this item the first meeting in July. He said the budget recommended a transfer of \$1.7 million, and unless we change the Ordinance we won't be able to do this, noting it would be a significant impact.

Councilor Maestas said we had a lot of discussion and he realizes the connection with the budget we've already approved. He said Mayor Pro-Tem Ives offered some amendments that address some of the discussion. He said there are a lot of moving parts to this issue, one of which is the repayment plan that has been going on since 2006, the repayment from the Water Fund to the General Fund. He thought we had a repayment balance of \$5 million one year ago. He got the information he requested on the entire payment plan. He said he was told previously it was paid in full, but he has learned there is a balance of just less than \$1 million in the repayment plan that will be transferred from the Water Fund to the CIP. He would like the legislation to contain a one-year sunset, and a plan to reassure the community that we are going to come up with a sound policy to support and justify transfer from the Water Fund to the General Fund, noting the payment in lieu of taxes was 12%. He doesn't want to disrupt the currently approved budget, but he feels we have an obligation to send the message that we aren't going to continue the practice for another year and it will be germane and relate only to the current budget, and these are the steps we're going to take to develop a sound policy to support future transfers.

Councilor Maestas continued saying he is working on an amendment to this Ordinance and is curious as to why we're already publishing, how many committees this will go to. He will be bringing forth some amendments consistent with the points he has made this evening.

Councilor Dominguez said this is just a request to publish and he doesn't mind that as long as we have the discussions we need to have at Finance, noting it is on the Agenda for Monday's meeting. He thinks Councilor Maestas's comments are "actually right on." He wants the legislation to be consistent with the direction we gave during the budget process and approval, which is that it sunsets in one year, and perhaps even sooner. This means we have to have a significant and clear roadmap to the future and what we're going to do – revenue enhancement or cuts. Either way, we have tough decisions to make, and sunsetting this policy forces us to do just that.

Councilor Dominguez continuing, saying he is proposing legislation tonight that will help with that process. He is okay with publishing tonight as long as we have those discussions and amendments at Finance.

Councilor Bushee said we already passed the July 1 budget submittal for the next fiscal year. She understands you have to get legislation through a committee, noting it hasn't gone to Finance, but it didn't make it out of PUC, and there is talk of lots of amendments. She said the title may or may not change. She doesn't understand why we couldn't do this publication after it goes through Finance.

Mayor Pro-Tem Ives said the 2011 Resolution was in place before most of us came on the Council, which was a limitation on the capacity of the City to transfer from enterprise funds to the General Fund. All of the funds are City funds and as part of the budgeting process, we had capacity to allocate and utilize those funds to pay expenses across the City. He thought it was nice that the 2011 Ordinance restricted in some sense the capacity of the City to transfer funds from enterprise funds into the General Fund. For

whatever circumstance, in this year we have found ourselves where during the budgeting process, the Finance Committee and to the Council and by the Council at its last meeting, a budget that called for a transfer of 12% from the water fund into the General Fund so we could balance our budget. That 12% is about \$4.7 million, and the 2011 Resolution allows only a transfer of up to \$1.7 million, leaving a balance of \$3 million. This measure is designed to correct that by using funds available to us, and that we're not violating our ordinances, and to permit up to 12% to be conveyed. It does not mean that in any year following this that any money necessarily have to be conveyed out of any enterprise fund, as that determination is made annually during the budgeting process.

Mayor Pro-Tem Ives said, "This is, I think, appropriately seen as an effort to true-up the budget to our Ordinance so we're not *per se* in violation of it for long, and that seems to be something that's better done swiftly, rather than in a long and drawn-out process. And as Councilor Rivera referenced at Public Works, if we don't move forward then we have this \$3 million hole in the budget, and we need to start having discussions as to revenue enhancements, what costs, expenses and services we are going to look at cutting."

Councilor Bushee said she has a procedural question which is, "then my repeal bill should have been published as well. It hasn't been through a Committee yet. It's just seems that that's where you do the work of the committees. Tonight, we just spend an hour on sustainable whatever, and it probably should have been thoroughly discussed in committees and not make it up here for that kind of discussion. It seems everybody's got an interest. We're already past deadlines. Why wouldn't we amend the bill in committee, do that work and then publish it. What if you change something significantly, even in the title, then you're set back again."

Kelley Brennan, City Attorney, said, "We are not past the deadline. The budget is an iterative process with DFA. When we submitted the budget, it needed to be submitted by June 1. DFA then reviews and will give us an interim approval, and then in that interim approval they will list a number of things. Then they may have questions, and may want detail about something, and may want further adjustments or further information. This is typical. We usually get an interim approval that lists a number of items. So we expect, having discussed this with DFA recently, that DFA will issue an interim approval and say yes, we have to pass this Ordinance because it provides the funds to fund your approved budget. If you don't, you will have to cover that gap. And the way the gap would be covered would be by the Governing Body before July 31<sup>st</sup>, either making cuts or finding other sources of revenue to finance the gap. So if this in by July 31<sup>st</sup> DFA issues the final approval. So the timing on this means it needs to be adopted within the July time frame."

Councilor Bushee said we have an Ordinance introduced by Councilor Calvert and approved by the Council, that if any piece of legislation that doesn't make it through a Committee it doesn't go forward.

Ms. Brennan said, "That has been a practice, but under certain circumstances like this, and if you remember on the marijuana initiative, there were also external issues of timing. They were put on the Agenda by the City Manager for consideration by the body as a whole. Similarly, this is just a request to advertise. This is what we did with the marijuana initiative, for example."

Councilor Dominguez said, "I am is looking at the Governing Body Procedural Rules and it doesn't say that you have to follow the process to publish. We've been doing that, but it doesn't say specifically we have to follow the process to publish. Now you are correct Councilor Bushee that if this bill fails in Finance, then there are issues to be addressed at a much higher level than even the Governing Body, with respect to our budget and the way it's been submitted. So I think, in practice, yes usually we publish the notice after it's gone through some deliberation at Committee, but it's not specified in the procedures that it shall, it's not as explicit since that's the term I'm going to use tonight, as Councilor Calvert's rules are that were amended or approved or whatever."

Councilor Bushee asked, "Is it an Ordinance or a Governing Body procedure, Calvert's."

Councilor Dominguez said we approved that.

**MOTION:** Mayor Pro-Tem Ives moved, seconded by Councilor Dominguez, to approve the Request to Publish.

**VOTE:** The motion was approved on the following Roll Call vote:

**For:** Mayor Pro-Tem Ives, Councilor Dimas, Councilor Dominguez, Councilor Lindell, Councilor Maestas, Councilor Rivera and Councilor Trujillo.

**Against:** Councilor Bushee said, "No. This has been a really sloppy and political process and the work should be done in Committee.

*Break 7:20 to 7:30 p.m.*

***Mayor Pro-Tem Ives exercised the prerogative of the Chair to move Items #14 through #17 to the end of the Evening Agenda***

**END OF AFTERNOON SESSION AT 7:30 P.M.**

**ACTION SHEET**  
**CITY COUNCIL COMMITTEE MEETING OF 06/24/2015**  
**ITEM FROM FINANCE COMMITTEE MEETING OF 06/15/2015**

**ISSUE:**

32. Request for Approval of an Ordinance Amending Section 11-12.1 SFCC 1987 to Modify the Formula by Which the Governing Body May Authorize Funds for Transfer From an Enterprise Fund to the General Fund. (Councilor Ives) (Oscar Rodriguez)

**Committee Review:**

Public Utilities Committee (not approved) 06/03/15  
 City Council (request to publish) – approved as amended 06/10/15  
 City Council (public hearing) 07/08/15

Fiscal Impact – Yes (Revenue Sources in operating of \$3,000,000)

**FINANCE COMMITTEE ACTION: APPROVED AS CONSENT ITEM**

**FUNDING SOURCE:**

**SPECIAL CONDITIONS OR AMENDMENTS: Amend expiration of contract to 06/30/2016 and delete verbiage “non-routine” on page 3, line 9**

**STAFF FOLLOW-UP:**

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR TRUJILLO	X		
COUNCILOR RIVERA	X		
COUNCILOR LINDELL	X		
COUNCILOR MAESTAS	X		
CHAIRPERSON DOMINGUEZ			

06/15/2015