

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1142

SPONSOR: Natural Resources Committee and Senators Clary and Peaden

SUBJECT: Air Quality Costs/Electric Utilities

DATE: February 21, 2002      REVISED: 3/6/02 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Voigt</u>	<u>NR</u>	<u>Favorable/CS</u>
2.	<u>Wiehle</u>	<u>Caldwell</u>	<u>RI</u>	<u>Fav/3 amendments</u>
3.	_____	_____	<u>CA</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	<u>RC</u>	_____

## I. Summary:

This bill adds to the list of costs recoverable through an electric utility's environmental compliance cost-recovery factor certain costs incurred by the utility to prevent imminent noncompliance with applicable ozone ambient air quality standards by an electrical generating facility owned by that electric utility.

This bill amends s. 366.8255, F.S.

## II. Present Situation:

The Clean Air Act was first adopted in 1970 with significant amendments added in 1977 and the last amendments were signed into law on November 15, 1990. The 1990 amendments were adopted after nearly a decade of contentious debate and contain a total of 11 titles (7 major titles). Those titles include:

- Title I — Nonattainment Areas
- Title II — Mobile Source Controls
- Title III — Toxic Air Pollution
- Title IV — Acid Rain
- Title V — Air Operation Permits
- Title VI — Ozone Depletion (CFCs)
- Title VII — Enforcement
- Titles VIII-XI — Miscellaneous Provisions

States were given the primary responsibility for implementing these amendments. Legislatures were required to revise and enact certain air pollution programs.

Under the Clean Air Act Amendments of 1990, the U.S. Environmental Protection Agency (EPA) has established limits for the amount of a pollutant that can be in the air anywhere in the United States. The law allows individual states to have stronger pollution controls, but may not have less stringent controls than those set by the EPA.

States are required to develop state implementation plans (SIP) that explain how each state will implement its responsibilities under the Clean Air Act. The SIP must be periodically updated to ensure attainment and maintenance of national ambient air quality standards throughout Florida. In developing the state implementation plan, the public is involved through hearings and opportunities to comment. The EPA must approve each state's SIP and if the plan is unacceptable, the EPA can assume the authority over enforcing the Clean Air Act in that state. The 1990 Clean Air Act Amendments enabled the EPA to directly fine violators.

In 1999, the U.S. Justice Department, on behalf of EPA, filed seven separate lawsuits against electric utility companies in the Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Mississippi, Ohio, Tennessee, and West Virginia, charging that the companies' power plants illegally released massive amounts of air pollutants for years and have contributed to some of the most severe environmental problems facing the U.S. today. The EPA also issued an administrative order against the Tennessee Valley Authority, charging that agency with similar violations at seven plants.

In Florida, ch. 366, F.S., governs the jurisdiction of the Public Service Commission (PSC) over electric utilities. Pursuant to s. 366.04, F.S., the PSC fully regulates five investor-owned utilities (IOU), with limited rate structure jurisdiction over the rural electric cooperatives and municipally owned electric utilities.

Rate regulation has historically been cost based. Utilities are allowed to charge rates that recover the actual cost of producing and delivering electricity plus a fair return on investment. The PSC has established numerous procedures to ensure that electric rates are fair. The ratemaking and rate review methods currently in use by the PSC include:

- A full revenue requirements rate case – all costs and expenses are justified by the utility and recurring operating expenses and prudent expenses are included in the net operating income. A fair rate of return on investment is determined based on prevailing market conditions.
- Monthly surveillance reports – are filed monthly by each IOU with the PSC showing current and year to date accounting and financial data. The information is used to ensure that the rates being charged remain reasonable.
- Recovery clauses – annual evidentiary hearings are conducted by the PSC to consider charges passed through to ratepayers. This method pertains only to the IOU. There are four separate cost recover clauses available to utilities. These are:
  - Fuel and Purchased Power
  - Purchased Capacity
  - Environmental
  - Energy Conservation

The Florida Legislature, through section 7 of chapter 93-35 of the Laws of Florida, created s. 366.8255, F.S., to address environmental cost recovery through environmental compliance cost recovery factors that are separate and apart from the utility's base rates. Section 366.8255(1)(d), F.S. , provides that environmental compliance costs include all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including but not limited to the following:

- Inservice capital investments, including the electric utility's last authorized rate of return on equity thereon;
- Operation and maintenance expenses;
- Fuel procurement costs;
- Purchased power costs;
- Emission allowance costs; and
- Direct taxes on environmental equipment.

The statute further states in s. 366.8255(2), F.S., that:

[a]n electric utility may submit to the commission a petition describing the utility's proposed environmental compliance activities and projected environmental compliance costs in addition to any Clean Air Act compliance activities and costs shown in a utility's filing under s. 366.825. If approved, the commission shall allow recovery of the utility's prudently incurred environmental compliance costs, including the costs incurred in compliance with the Clean Air Act, and any amendments thereto or any change in the application or enforcement thereof, through an environmental compliance cost-recovery factor that is separate and apart from the utility's base rates. An adjustment for the level of costs currently being recovered through base rates or other rate-adjustment clauses must be included in the filing.

Finally, s. 366.8255(5), F.S., provides that:

[r]ecovery of environmental compliance costs under this section does not preclude inclusion of such costs in base rates in subsequent rate proceedings, if that inclusion is necessary and appropriate; however, any costs recovered in base rates may not also be recovered in the environmental cost-recovery clause.

### **III. Effect of Proposed Changes:**

This bill adds an additional category to the list of expenses that are recoverable through the environmental compliance cost-recovery factor. Section 366.8255(1)(d), F.S., the definition of "environmental compliance costs," is amended to include costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into prior to January 1, 2003, between the electric utility and the Florida Department of Environmental Protection or the U.S. Environmental Protection Agency for the purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

This bill will allow those electric utilities that have entered into a voluntary agreement with DEP or EPA to make extensive modifications to their generating facilities to prevent imminent noncompliance with ozone ambient air quality standards and to recover those costs and expenses prudently incurred from the ratepayer. At the present time, this bill is expected to impact only those electric generating facilities owned by Gulf Power in Escambia and Santa Rosa Counties. It is possible, however, that it could be applied to other agreements, past or future, that meet the stated criteria.

## C. Government Sector Impact:

Indeterminate. It has been argued that Escambia and Santa Rosa Counties face potential detrimental financial impacts if the areas are found to be out of compliance with ozone ambient air quality standards, and that this bill will avoid those costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Regulated Industries:

The amendment requires that any agreement between an electric utility and an environmental agency be entered into on or after the effective date of the bill and before July 1, 2002, which

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prevents application of the bill's cost recovery mechanism to pre-existing agreements and shortens the time for entering into new agreements.

#2 by Regulated Industries:

The amendment clarifies that the cost recovery is limited to costs incurred for the exclusive purpose of ensuring compliance with ozone ambient air quality standards.

#3 by Regulated Industries:

The amendment creates the Florida Renewable Energy Purchase Act, requiring that at least four percent of the electric power sold by each public utility in 2003 and thereafter be renewable energy. (WITH TITLE AMENDMENT)

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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